

ESTTA Tracking number: **ESTTA539995**Filing date: **05/27/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203277
Party	Plaintiff 3D International, LLC
Correspondence Address	THOMAS COOK THOMAS COOK INTELLECTUAL PROPERTIES 3030 BRIDGEWAY, SUITE 425 SAUSALITO, CA 94965 UNITED STATES tom@thomascooklaw.com, thomascooklaw@pacbell.net
Submission	Motion to Compel Discovery
Filer's Name	Thomas W. Cook
Filer's e-mail	thomascooklaw@pacbell.net, tom@thomascooklaw.com
Signature	/Thomas W. Cook/
Date	05/27/2013
Attachments	Motion to Compel Discovery & Sanctions.pdf(115121 bytes) Exhibit A - 2012 08 10 Opposer's Interrogatories, Set One - AUTOPIA FORUM - As Served.pdf(245388 bytes) Exhibit A - 2012 08 10 Opposer's RFA, Set One - AUTOPIA FORUM - As Served.pdf(980142 bytes) Exhibit A - 2012 08 10 Opposer's RFPOD, Set One - AUTOPIA FORUM - As Served.pdf(206076 bytes) Exhibit B - 2012 10 03 Opposer's Interrogatories, Set Two, AUTOPIA FORUM & AUTOPIA FORUMS - 91203277 & 91203279.pdf(68145 bytes) Exhibit B - 2012 10 03 Opposer's Request for Admission, Set Two, AUTOPIA FORUM & AUTOPIA FORUMS - 91203277 & 91203279.pdf(69747 bytes) Exhibit B - 2012 10 03 Opposer's Request for Production, Set Two, AUTOPIA FORUM & AUTOPIA FORUMS - 91203277 & 91203279.pdf(68238 bytes) Exhibit C - 2012 12 17 Email to Applicant's Attorney.pdf(47082 bytes) Exhibit D - 2012 12 19 Email from Applicant's Attorney.pdf(40998 bytes) Exhibit E - 2012 12 19 Email to Applicant's Attorney.pdf(50759 bytes) Exhibit F - 2012 12 21 Email from Applicant's Attorney.pdf(48083 bytes) Exhibit G - 2012 12 22 Email to Applicant's Attorney.pdf(62355 bytes) Exhibit H - 2013 01 07 Email to Applicant's Attorney.pdf(63503 bytes) Exhibit I - 2013 01 15 Email to Applicant's Attorney.pdf(42247 bytes) Exhibit J - 2013 01 21 Email to Applicant's Attorney.pdf(43160 bytes) Exhibit K - 2013 01 21 Email from Applicant's Attorney.pdf(135484 bytes) Exhibit L - 2013 04 17 Email to Applicant's Attorney.pdf(55662 bytes) Exhibit M - 2013 04 17 Email from Applicant's Attorney.pdf(38251 bytes) Exhibit N - 2013 04 29 Email to Applicant's Attorney.pdf(47190 bytes)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial Nos. 85261047 & 85312684

4 Mark: AUTOPIA FORUM; AUTOPIAFORUMS

6 _____
7 3D INTERNATIONAL, LLC, a
8 California limited liability company.

9 Opposer,

10 v.

11 PALM BEACH MOTORING
12 ACCESSORIES, INC.,
13 a Florida corporation

14 Applicant.

 Opposition Nos. 91203277 (parent)
 91203279

**OPPOSER’S MOTION TO
COMPEL RESPONSES TO:**

**1. OPPOSER’S REQUESTS FOR
ADMISSIONS, SETS ONE & TWO**

**2. OPPOSER’S INTERROGATORIES,
SETS ONE & TWO**

**3. OPPOSER’S REQUESTS FOR
DOCUMENTS, SETS ONE & TWO**

**AND OPPOSER’S REQUEST TO
RESET DISCOVERY AND TRIAL,
AND FOR SANCTIONS**

18 THOMAS W. COOK, counsel for Opposer in this matter, hereby affirms under penalty of
19 perjury:

20 1. I submit this affirmation in support of:

- 21 a. Opposer’s motion to compel Applicant’s responses to discovery requests,
22 b. Opposer’s request to reset the discovery and trial calendar in these
23 consolidated cancellation actions, and,
24 c. Opposer’s request that all Opposer’s Requests for Admissions served thus
25 far be deemed admitted by Applicant, and all objections to Opposer’s
26 discovery served thus far be waived by Applicant.

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1 **FACTUAL BACKGROUND**

2 2. On August 10, 2012, I served Opposer's first set of discovery requests on
3 Applicant, which requests included: (a) **OPPOSER'S INTERROGATORIES, SET ONE**, (b)
4 **OPPOSER'S REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, SET**
5 **ONE**, and (c) **OPPOSER'S REQUESTS FOR ADMISSIONS, SET ONE**. I attach to this
6 Motion to Compel as Exhibit A copies of each of these discovery requests.

7 3. On August 27, 2012, Opposer requested, and the Board granted, an extension of
8 time, with consent of Applicant, to reset discovery and trial dates as follows:

9 Discovery Closes : 01/10/2013
10 Plaintiff's Pretrial Disclosures : 02/24/2013
11 Plaintiff's 30-day Trial Period Ends : 04/10/2013
12 Defendant's Pretrial Disclosures : 04/25/2013
13 Defendant's 30-day Trial Period Ends : 06/09/2013
14 Plaintiff's Rebuttal Disclosures : 06/24/2013
15 Plaintiff's 15-day Rebuttal Period Ends : 07/24/201

16 4. On October 3, 2012, I served Opposer's second set of discovery requests on
17 Applicant, which requests included: (a) **OPPOSER'S INTERROGATORIES, SET TWO**, (b)
18 **OPPOSER'S REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, SET**
19 **TWO**, and (c) **OPPOSER'S REQUESTS FOR ADMISSIONS, SET TWO**. I attach to this
20 Motion to Compel as Exhibit B copies of each of these discovery requests.

21 5. On October 15, 2012, Applicant filed Applicant's Motion for Summary Judgment
22 (the "MSJ"), and on December 12, 2012, the Board suspended these consolidated proceedings
23 pending its decision on Applicant's MSJ.

24 6. On December 17, 2012, I forwarded Opposer's latest proposal for settlement to
25 attorney for Applicant, along with Opposer's response to Applicant's MSJ. At the same time, I
26 requested from attorney for Applicant a status regarding all outstanding discovery served on
27 Applicant on August 10, 2012 (Set One), and October 3, 2012 (Set Two). (Exhibit C - 2012 12
28 17 Email to Applicant's Attorney)

7. On December 19, 2012, attorney for Applicant advised he thought discovery was
suspended in view of Applicant's MSJ. (Exhibit D - 2012 12 19 Email from Applicant's
Attorney)

1 8. On December 19, 2012, I summarized for Applicant's attorney Opposer's
2 discovery and Motion activity for attorney for Applicant with the follow five enumerated
3 activities:

4 a. On August 10, 2012, Opposer served Opposer's Discovery, Set One.
5 Responses due: September 14, 2012.

6 b. On August 27, 2012, Opposer and Applicant agreed to reset the deadline
7 for responses to Opposer's Discovery, Set One, and consistent with
8 Applicant's request, agreed on an additional 30 days for Applicant to
9 respond, on or before October 14, 2012.

10 c. On October 3, 2012, Opposer served Opposer's Discovery, Set Two.
11 Responses due: November 7, 2012.

12 d. On October 15, 2012, Applicant served its Motion for Summary
13 Judgement (the "MSJ").

14 e. On December 12, 2012, the Board Suspended these cases.
15 (Exhibit E - 2012 12 19 Email to Applicant's Attorney)

16 9. In my communication of December 19, 2012, I also advised attorney for
17 Applicant about the requirements of TBMP Section 528.03, Suspension Pending Determination
18 of Motion. This section says: "The filing of a summary judgment motion does not, in and of
19 itself, automatically suspend proceedings in a case; rather, proceedings are suspended only when
20 the Board issues an order to that effect. [Note 2.] However, on a case-by-case basis, the Board
21 may find that the filing of a motion for summary judgment provides a party with good cause for
22 not complying with an otherwise outstanding obligation, for example, responding to discovery
23 requests." (Exhibit E - 2012 12 19 Email to Applicant's Attorney) Attorney for Applicant did not
24 say my summary of our discovery and Motion activity was incorrect, nor did he say TBMP
25 Section 528.03 does not control Applicant's obligation to provide responses to discovery.

26 10. On December 21, 2012, attorney for Applicant opined: "I interpret the below
27 quoted passage from the TBMP to confirm that once issued, the Board's suspension order is
28 effective as of the *filing date* of a SJ motion, and that the filing of the motion provides good

1 cause for the movant not to respond to any discovery requests that are outstanding on the date the
2 motion is filed." (Exhibit F - 2012 12 21 Email from Applicant's Attorney) This appears to be
3 Applicant's definite statement about Applicant's discovery obligations, and Opposer understands
4 Applicant's position to be that it will not respond to Opposer's discovery requests served prior to
5 the filing of Applicant's MSJ until the MSJ was decided.

6 11. On December 22, 2012, I advised attorney for Applicant of McCarthy's view that
7 "Upon the filing of a motion...for summary judgment or any motion that has the potential for
8 disposing of the case, the case will be suspended by the Board as to all other matters such that no
9 party should file any paper not directly relevant to that motion. But the mere filing of such
10 potentially dispositive motion does not itself relieve the parties from responding to discovery
11 requests. Under the rule, the motion itself does not suspend proceedings, only an order by the
12 Board does so." Citing *Giant Food, Inc. v. Standard Terry Mills, Inc.* 229 U.S.P.Q. 955
13 (T.T.A.B. 1986). I then again requested Applicant's position. (Exhibit G - 2012 12 22 Email to
14 Applicant's Attorney)

15 12. On January 07, 2013, I renewed my request for Applicant's position on
16 outstanding discovery (Exhibit H - 2013 01 07 Email to Applicant's Attorney), and Applicant's
17 attorney advised by return email on that same day "As to the discovery matter, we will respond to
18 your 12/22 inquiry shortly." (Exhibit I - 2013 01 15 Email to Applicant's Attorney) On January
19 15, 2013, I renewed my request for Applicant's position on outstanding discovery. (Exhibit I -
20 2013 01 15 Email to Applicant's Attorney) On January 21, 2013, I again renewed my request for
21 Applicant's position on outstanding discovery. (Exhibit J - 2013 01 21 Email to Applicant's
22 Attorney)

23 13. On January 21, 2013, attorney for Applicant advised: "3D's discovery was not due
24 for response "prior" to filing of PBMA's motion for summary judgment." Attorney for Applicant
25 did not then advise on PBMA's position regarding Opposer's discovery served prior to the filing
26 of Applicant's MSJ (Exhibit K - 2013 01 21 Email from Applicant's Attorney, page 2).

27 14. Given this course of communication between myself, as attorney for Opposer, and
28 Applicant's attorney, I advised Applicant's attorney on January 22, 2013 that Opposer and I

1 understand Applicant's position remains as set forth most clearly in its December 21, 2012,
2 email. That is, Applicant's position was that it would not then respond to Opposer's discovery
3 requests served prior to the filing of Applicant's MSJ, despite this course of discussion about
4 those requests, despite numerous requests for Applicant's position on discovery, and despite
5 Opposer's requests for responses to Opposer's two sets of discovery served prior to the filing of
6 Applicant's MSJ. I then again asked for those responses to discovery, advised attorney for
7 Applicant that the above factual summary will serve as the factual basis for our motion for
8 sanctions for failure to respond to discovery, and requested correction of this factual summary if
9 attorney for Applicant thought the above factual summary is incorrect in any particular. (Exhibit
10 K - 2013 01 22 Email from Applicant's Attorney, pages 1 and 2)

11 15. On April 16, 2013, the Board denied Applicant's MSJ, and on April 17, 2013, I
12 again renewed my request for discovery responses from Applicant's attorney. (Exhibit L - 2013
13 04 17 Email to Applicant's Attorney)

14 16. On April 17, 2013, the Applicant's attorney advised he was reviewing my request
15 for discovery responses. (Exhibit M - 2013 04 17 Email from Applicant's Attorney)

16 17. On April 29, 2013, I renewed my request for a status on outstanding discovery
17 responses (Exhibit N - 2013 04 29 Email to Applicant's Attorney), and Applicant's attorney
18 suggested a further suspension. (Exhibit O - 2013 04 29 Email from Applicant's Attorney)

19 18. On May 6, 2013, I responded to Applicant's April 29, 2013, suspension request
20 with, amongst other things, a suggestion how that suspension might be accomplished. (Exhibit P
21 - 2013 05 06 Email to Applicant's Attorney)

22 19. On May 20, 2013, I received APPLICANT'S RESPONSES TO OPPOSER
23 REQUESTS FOR ADMISSIONS, SET ONE, and on May 23, 2013, I received APPLICANT'S
24 RESPONSES TO OPPOSER'S REQUESTS FOR ADMISSIONS, SET TWO. Applicant has
25 yet to provide the remainder of the outstanding discovery served August 10, 2012, and October 2,
26 2012.

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1 **ARGUMENT**

2
3 20. "The filing of a summary judgment motion does not, in and of itself, automatically
4 suspend proceedings in a case; rather, proceedings are suspended only when the Board issues an
5 order to that effect. TBMP Section 528.03, Suspension Pending Determination of Motion.
6 Contrary to this provision of the TBMP, Applicant has failed to provide timely responses to
7 Opposer's discovery requests.

8 21. More specifically, despite a discussion about Applicant's obligations regarding
9 discovery responses, and an extensive discussion about the requirements of TBMP Section
10 528.03, despite numerous requests to Applicant for responses to Opposer's discovery, Applicant
11 has failed to timely provide such responses, and has only just provided responses to OPPOSER'S
12 REQUESTS FOR ADMISSIONS, SET ONE, which was served August 10, 2012, and due for
13 response on or before October 14, 2012 (after agreement for additional time), and OPPOSER'S
14 REQUESTS FOR ADMISSIONS, SET TWO, which was served October 2, 2012, and due for
15 response on or before November 6, 2012. Recall the Board suspended these consolidated
16 proceedings pending its decision on Applicant's MSJ on December 12, 2012.

17 22. Since the Board rendered its decision on Applicant's MSJ, Applicant has slowly
18 begun to provide responses to these outstanding discovery. However, while Opposer has
19 repeatedly requested Applicant's responses, Opposer has said nothing about when such responses
20 will be returned. Meanwhile, the discovery and trial schedule set by the Board with its decision
21 on the MSJ is running. Opposer believes Applicant's failure to respond to discovery, and its
22 position that it will not provide discovery pending the decision on its MSJ, is inconsistent with
23 the rules, and that Applicant's recent reopening of settlement negotiations, without presenting
24 any proposal toward that settlement, has acted and continues to act against Opposer's clear rights
25 to demonstrate its rights in these consolidated cases.

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1 WHEREFORE, based on the foregoing, Opposer respectfully requests:

2 1. The Board issue an Order pursuant to 37 CFR 2.120(e), compelling Applicant to
3 immediately provide full and complete responses to all Applicant's outstanding discovery
4 requests.

5 2. The Board issue an Order holding Opposer's Requests for Admissions are, by
6 Applicant's failure to respond, deemed admitted. These requests include: (i) **OPPOSER'S**
7 **REQUESTS FOR ADMISSIONS, SET ONE**, and (ii) **OPPOSER'S REQUESTS FOR**
8 **ADMISSIONS, SET TWO**.

9 3. The Board issue an Order holding Applicant may not object to Opposer's remaining
10 outstanding discovery. This discovery includes: (iii) **OPPOSER'S INTERROGATORIES,**
11 **SET ONE**, (iv) **OPPOSER'S REQUESTS FOR PRODUCTION OF DOCUMENTS AND**
12 **THINGS, SET ONE**, (v) **OPPOSER'S INTERROGATORIES, SET TWO**, (vi)
13 **OPPOSER'S REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, SET**
14 **TWO**.

15 4. The Board issue and Order resetting the discovery and trial schedule in these
16 consolidated actions to provide Opposer sufficient time to secure responses to its outstanding
17 discovery, and further discovery Opposer wishes to serve. In view of the delay Applicant has
18 occasioned through its failure and refusal to respond, Opposer believes an appropriate
19 rescheduling of discovery and trial will include an additional ten (10) months over the schedule
20 the Board set on April 16, 2013. Accordingly, Opposer requests the Board reschedule discovery
21 and trial in these consolidate proceeding as follows:

22 Expert Disclosures Due 4/1/2014
23 Discovery Closes 5/1/2014
24 Plaintiff's Pretrial Disclosures 6/15/2014
25 Plaintiff's 30-day Trial Period Ends 7/29/2014
26 Defendant's Pretrial Disclosures 8/14/2014
27 Defendant's 30-day Trial Period Ends 9/28/2014
28 Plaintiff's Rebuttal Disclosures 10/13/2014
Plaintiff's 15-day Rebuttal Period Ends 11/12/2014

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5. The Board suspend Applicant's obligation to respond to Opposer's May 29, 2007, discovery requests until at least one month after Opposer has responded to Applicant's discovery requests, and

6. For all other relief that this Board may deem proper.

Respectfully submitted,

Date: May 27, 2013

Thomas W. Cook

Thomas W. Cook, Reg. No. 38,849
Attorney for Applicant
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this document is today being submitted via electronic filing utilizing the ESTTA system on:

Date: May 27, 2013

Thomas W. Cook

Thomas W. Cook

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I am over the age of 18 years, and am not a party to the within cause. I am employed in Sausalito, California.

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Opposer's Motion to Compel Responses to Discovery, Reset Discovery, and Sanctions Page 9

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 in the Matter of Trademark Application Serial NO. 85/261,047

4 Mark: AUTOPIA FORUM

5
6 3D INTERNATIONAL, LLC, a
7 California limited liability company.

8 Opposer.

9 v.

10 PALM BEACH MOTORING
11 ACCESSORIES, INC.,
12 a Florida corporation

13 Applicant.

Opposition No. 91203277

14
15 **OPPOSER'S INTERROGATORIES, SET ONE**

16 Propounding Party: Opposer, 3D International, LLC
17 Responding Party: Applicant, Palm Beach Motoring Accessories, Inc.
18 Set Number: One

19
20 Pursuant to Fed. R. Civ. P. 33 and 37 C.F.R. §2.120(d), propounding party Opposer
21 requests Applicant answer and verify each of the following written interrogatories separately and
22 under oath within thirty (30) days hereof. TBMP §407.

23 **DEFINITIONS**

- 24 1. "Applicant" means Palm Beach Motoring Accessories, Inc., Applicant in this
25 opposition proceeding.
26 2. "Applicant's Marks" means:
27 (i) the words "AUTOPIA FORUM," as these words appear in Application Serial
28 No. 85/261,047, and

(ii) the word "AUTOPIAFORUMS," as this word appears in Application Serial No. 85/312,684.

3. "Applicant's Applications" means the applications for registration filed by Applicant at the United States Patent and Trademark Office, serial number 85/261,047, and serial number 85/312,684, for Applicant's Marks.
4. "Applicant's Services" means those services identified in Applicant's Applications.
5. "Opposer" means 3D International, LLC, Opposer in this opposition proceeding.
6. "Opposer's Marks" means the words "AUTOPIA," as this word appears in Application Serial No. 85/338,384, and "AUTOPIA FORUMS."
7. "Opposer's Application" means the application for registration filed by Opposer at the United States Patent and Trademark Office, serial number 85/338,384.
8. "Purchase Agreement" means that certain Domain Name Purchase Agreement dated February 10, 2011 between Applicant and David Ostroff and Lov Finish Care, Inc.
9. The singular number and masculine gender used herein also means the plural, feminine or neuter as may be appropriate.
10. These interrogatories call for all information (including information contained in writing) which is best known or reasonably available to you, including all information in possession of your attorneys or investigators or representatives, or others acting on your behalf or under your direction or control.
11. Unless specified to the contrary, in answering these interrogatories, you are to provide all information, data, and facts known or reasonably available to you through the date you file your response hereto. When an exact date called for by an interrogatory is not known to you, give the most accurate, approximate date of the event or item described, indicating that it is approximate.
12. When you are asked to "Identify" a person (including a juridical person) or a "user," state, for each such person:

- 1 a. The full name of the person,
- 2 b. All positions and titles (if any), together with relevant dates held by said
- 3 persons, and
- 4 c. The present business address of such persons, or the person's residential
- 5 address if the business address is unknown.
- 6 13. When you are asked to "Identify" a judicial proceeding, arbitration, mediation, or
- 7 opposition, state, for each such proceeding:
- 8 a. The full name of the adverse party in such judicial proceeding, arbitration,
- 9 mediation, or opposition.
- 10 b. The full name of the action in such judicial proceeding, arbitration,
- 11 mediation, or opposition.
- 12 c. The full name of the court, arbitration panel, mediation panel, or other
- 13 deciding body, and
- 14 d. The date of filing such judicial proceeding, arbitration, mediation, or
- 15 opposition.
- 16 14. When you are asked to "Identify" a contract, including any contract which
- 17 comprises a license to use Applicant's Marks, state, for each such contract:
- 18 a. The full names of the parties to such contract.
- 19 b. The execution date of such contract,
- 20 c. The character of such contract, including what the contract is or was meant
- 21 to accomplish.
- 22 d. Which of Applicant's Marks have been licensed, if any.
- 23 12. When you are asked to "Identify" an infringement, state, for each such
- 24 infringement:
- 25 a. Whether Applicant has made a demand on any other entity based on a
- 26 claim of infringement of one of Applicant's Marks.
- 27 b. Whether another entity has made a demand on Applicant, or its licensee if
- 28 any, based on a claim of infringement by one of Applicant's Marks.

- 1 c. The name of the adverse party with whom Applicant was dealing.
- 2 d. The date and nature of the demand.

3

4 **INTERROGATORIES**

5 INTERROGATORY NO. 1

- 6 1. Describe how Applicant selected and adopted Applicant's Marks for its business
- 7 activities.

8 INTERROGATORY NO. 2

- 9 2. Identify the person who made the decision to adopt Applicant's Marks for Applicant's
- 10 business.

11 INTERROGATORY NO. 3

- 12 3. State whether Applicant conducted a trademark search prior to adopting Applicant's
- 13 Marks for its business activities, and whether Applicant has conducted a trademark search
- 14 since such adoption.

15 INTERROGATORY NO. 4

- 16 4. State the number of records appearing in Applicant's trademark searches, if any, which
- 17 refer to trademarks or service marks which contain the word "autopia."

18 INTERROGATORY NO. 5

- 19 5. Identify the persons or firms which have conducted trademark searches, if any, for
- 20 Applicant.

21 INTERROGATORY NO. 6

- 22 6. Describe how Applicant identifies individuals or businesses as being within Applicant's
- 23 market for the service Applicant has identified in Applicant's Applications.

24 INTERROGATORY NO. 7

- 25 7. State how Applicant describes the market comprising those individuals or businesses who
- 26 have used Applicant's service that Applicant has identified in Applicant's Applications.

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1 INTERROGATORY NO. 8

2 8. Describe each means or method used by Applicant, by which Applicant informs its
3 customers or potential customers that Applicant can supply the service Applicant has
4 identified in Applicant's Applications.

5 INTERROGATORY NO. 9

6 9. Describe how customers or potential customers became or may become aware of
7 Applicant's ability to supply the service Applicant has identified in Applicant's
8 Applications.

9 INTERROGATORY NO. 10

10 10. State how Applicant's services identified in Applicant's Applications are promoted,
11 marketed, and advertised under Applicant's Marks.

12 INTERROGATORY NO. 11

13 11. Identify all judicial proceedings, arbitrations, meditations, and oppositions about trade or
14 service marks in which Applicant has been involved.

15 INTERROGATORY NO. 12

16 12. Identify all licenses to use Applicant's Marks.

17 INTERROGATORY NO. 13

18 13. Identify each person who has contributed to the responses to these APPLICANT'S
19 INTERROGATORIES, SET ONE, and contributed to responses to APPLICANT'S
20 REQUEST FOR REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS,
21 SET ONE served herewith, and contributed to responses to APPLICANT'S REQUESTS
22 FOR ADMISSIONS, SET ONE served herewith, and state to which responses each such
23 person contributed.

24 INTERROGATORY NO. 14

25 14. Identify the persons Applicant expects to call as expert witnesses or as fact witnesses in
26 this proceeding, and identify the subject matter about which each such witness is
27 expected to testify.

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1 INTERROGATORY NO. 15

2 15. State the amount of Applicant's advertising expenditures relating to Applicant's Marks
3 for each of the individual years 2008 through 2012 to date.

4 INTERROGATORY NO. 16

5 16. Identify all documents and physical exhibits which Applicant expects to introduce into
6 evidence in this proceeding.


7 INTERROGATORY NO. 17

8 17. Identify all documents and physical exhibits which Applicant expects to introduce into
9 evidence in this proceeding presently in Applicant's possession or control.

10 INTERROGATORY NO. 18

11 18. Describe the method by which Applicant intends to provide documents in response to
12 Opposer's Requests for Documents and Things in this opposition.

13
14
15 Date: August 10, 2012


Thomas W. Cook, Reg. No. 38,849
Attorney for Applicant
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

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PROOF OF SERVICE

I hereby declare:

I am over the age of 18 years, and am not a party to the within cause. I am employed in Sausalito, California.

My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My mailing address is P.O. Box 1989, Sausalito, California.

On the date first written below, I served a true copy of the attached document entitled:

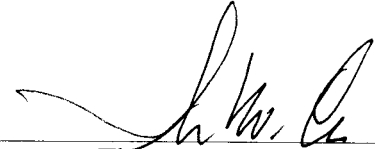
OPPOSER'S INTERROGATORIES, SET ONE

by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

Leo Zucker
Law Office of Leo Zucker
Patents & Trademarks
PO Box 1177
Yorktown Heights, NY 10598

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sausalito, California.

August 10, 2012



Thomas W. Cook

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial No. 85/261,047

4 Mark: AUTOPIA FORUM

5
6 3D INTERNATIONAL, LLC, a
California limited liability company.

7 Opposer,

8 v.

9 PALM BEACH MOTORING
10 ACCESSORIES, INC.,
a Florida corporation

11 Applicant.
12

Opposition No. 91203277

13
14 **OPPOSER'S REQUESTS FOR ADMISSIONS, SET ONE**

15 Propounding Party: Opposer, 3D International, LLC

16 Responding Party: Applicant, Palm Beach Motoring Accessories, Inc.

17 Set Number: One

18 Pursuant to Fed. R. Civ. P. 36, these Requests for Admissions call for information which
19 is known or reasonably available to you, including all information in possession of your
20 attorneys, investigators, representative, or others acting on your behalf or under your direction or
21 control. An answering party may not give lack of information or knowledge as a reason for
22 failure to admit or deny, unless the party states that the party has made reasonable inquiry, and
23 that the information known or readily obtainable by the party is insufficient to enable the party to
24 admit or deny. Unless specified to the contrary, in answering these Requests for Admissions,
25 you are to provide responses based on all information, data, and facts known or reasonably
26 available to you through the date you file your responses hereto.

27 Propounding party, requests that responding party, answer each of the following written
28 Requests for Admissions separately and under oath within thirty (30) days hereof. TBMP §411.

DEFINITIONS

1. "Applicant" means Palm Beach Motoring Accessories, Inc., Applicant in this opposition proceeding.
2. "Applicant's Marks" means:
 - (i) the words "AUTOPIA FORUM," as these words appear in Application Serial No. 85/261,047, and
 - (ii) the word "AUTOPIAFORUMS," as this word appears in Application Serial No. 85/312,684.
3. "Applicant's Applications" mean the applications for registration filed by Applicant at the United States Patent and Trademark Office, serial number 85/261,047, and serial number 85/312,684, for Applicant's Marks.
4. "Applicant's Services" means those services identified in Applicant's Applications.
5. "Opposer" means 3D International, LLC, Opposer in this opposition proceeding.
6. "Opposer's Marks" means the words "AUTOPIA," as this word appears in Application Serial No. 85/338,384, and "AUTOPIA FORUMS."
7. "Opposer's Application" means the application for registration filed by Opposer at the United States Patent and Trademark Office, serial number 85/338,384.
8. "Purchase Agreement" means that certain Domain Name Purchase Agreement dated February 10, 2011, between Applicant and David Ostroff and Lov Finish Care, Inc.
9. The singular number and masculine gender used herein also means the plural, feminine or neuter as may be appropriate.

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asked questions, posting of knowledge based collaboration materials.”

REQUEST FOR ADMISSION NO. 7

7. Admit Applicant knows Opposer supplies one or more of the following services: “In the field of auto detailing; provider of advertising and marketing services promoting the goods and services of others on-line communities and web pages; providing an on-line searchable database featuring classified ad listings.”

REQUEST FOR ADMISSION NO. 8

8. Admit Applicant knows Opposer supplies one or more of the following services: “Providing an on-line forum for auto detailing users and enthusiasts to discuss car care detailing supplies, auto care products, cleaning techniques, polishing techniques and equipment in the field of car care; posting of vehicle images, question posting and answers, exchange of ideas.”

REQUEST FOR ADMISSION NO. 9

9. Admit Applicant knows Opposer supplies one or more of the following services: “Providing an on-line computer platform in the field of auto care and detailing topic discussion, namely; educational guidebooks and reference guides, post vehicle images, posting user articles, blogs and non-downloadable publications, complication and archiving of frequently asked questions, posting of knowledge based collaboration materials.”

REQUEST FOR ADMISSION NO. 10

10. Admit Applicant has used one of Opposer’s Services.

REQUEST FOR ADMISSION NO. 11

11. Admit Applicant has advertised through Opposer.

REQUEST FOR ADMISSION NO. 12

12. Admit Applicant has advertised using one of Opposer’s Services.

REQUEST FOR ADMISSION NO. 13

13. Admit David Ostroff once owned an interest in the domain name www.autopia-carcare.com.

1 REQUEST FOR ADMISSION NO. 14

2 14. Admit Lov Finish Care, Inc. once owned an interest in the domain name www.autopia-
3 carcare.com.

4 REQUEST FOR ADMISSION NO. 15

5 15. Admit Applicant has succeeded to the ownership interest of David Ostroff in the domain
6 name www.autopia-carcare.com.

7 REQUEST FOR ADMISSION NO. 16

8 16. Admit Applicant has succeeded to the ownership interest of Lov Finish Care, Inc. in the
9 domain name www.autopia-carcare.com.

10 REQUEST FOR ADMISSION NO. 17

11 17. Admit Applicant's ownership interest in the domain name www.autopia-carcare.com
12 comes only from David Ostroff or Lov Finish Care, Inc.

13 REQUEST FOR ADMISSION NO. 18

14 18. Admit Applicant takes it's ownership interest in the domain name www.autopia-
15 carcare.com by the Purchase Agreement (dated February 10, 2011).

16 REQUEST FOR ADMISSION NO. 19

17 19. Admit all trademarks appearing on the web site located at the domain name
18 www.autopia-carcare.com were used by David Ostroff or Lov Finish Care, Inc.

19 REQUEST FOR ADMISSION NO. 20

20 20. Admit all trademarks appearing on the web site located at the domain name
21 www.autopia-carcare.com were owned by David Ostroff or Lov Finish Care, Inc.

22 REQUEST FOR ADMISSION NO. 21

23 21. Admit Applicant takes it's ownership interest in all trademarks appearing on the web site
24 located at the domain name www.autopia-carcare.com from the Purchase Agreement
25 (dated February 10, 2011).

26 REQUEST FOR ADMISSION NO. 22

27 22. Admit Applicant takes ownership interest in only those trademarks appearing on the web
28 site located at the domain name www.autopia-carcare.com by the Purchase Agreement

1 (dated February 10, 2011).

2 REQUEST FOR ADMISSION NO. 23

3 23. Admit the Purchase Agreement (dated February 10, 2011) obligates "Sellers" to sell,
4 assign, and transfer to Applicant Sellers right, title and interest in and to the domain name
5 www.Autopia-Carecare.com, and all trademark rights of Seller arising from use of
6 trademarks at www.Autopia-Carecare.com.

7 REQUEST FOR ADMISSION NO. 24

8 24. Admit the trademark AUTOPIA CARE CARE was used on the web site located at the
9 domain name www.Autopia-Carecare.com prior to execution of the Purchase Agreement
10 (dated February 10, 2011).

11 REQUEST FOR ADMISSION NO. 25

12 25. Admit the trademark AUTOPIA CARE CARE was used on the web site located at the
13 domain name www.Autopia-Carecare.com after execution of the Purchase Agreement
14 (dated February 10, 2011).

15 REQUEST FOR ADMISSION NO. 26

16 26. Admit the trademark AUTOPIA CARE CARE is used on the web site located at the
17 domain name www.Autopia-Carecare.com as of the dated of your responses to these
18 Requests for Admissions.

19 REQUEST FOR ADMISSION NO. 27

20 27. Admit Applicant's Marks (that is, AUTOPIA FORUM and AUTOPIAFORUMS) were
21 not used on the web site located at the domain name www.Autopia-Carecare.com prior to
22 execution of the Purchase Agreement (dated February 10, 2011).

23 REQUEST FOR ADMISSION NO. 28

24 28. Admit Applicant's Marks were not used on the web site located at the domain name
25 www.Autopia-Carecare.com after execution of the Purchase Agreement (dated February
26 10, 2011).

27 REQUEST FOR ADMISSION NO. 29

28 29. Admit Applicant's Marks are not used on the web site located at the domain name

1 www.Autopia-Carecare.com as of the date of your responses to these Requests for
2 Admissions.

3 REQUEST FOR ADMISSION NO. 30

4 30. Admit Applicant's Marks (that is, AUTOPIA FORUM and AUTOPIAFORUMS) are not
5 specifically mentioned in the Purchase Agreement (dated February 10, 2011).

6 REQUEST FOR ADMISSION NO. 31

7 31. Admit Applicant's Marks were not assigned to Applicant from David Ostroff or Lov
8 Finish Care, Inc. by the Purchase Agreement (dated February 10, 2011).

9 REQUEST FOR ADMISSION NO. 32

10 32. Admit Applicant's Marks were not assigned to Applicant from any other entity.

11 REQUEST FOR ADMISSION NO. 33

12 33. Admit Applicant now operates a web site at www.autopiaforums.com.

13 REQUEST FOR ADMISSION NO. 34

14 34. Admit Applicant now presents the mark AUTOPIAFORUMS on the web site at the
15 domain name www.autopiaforums.com.

16 REQUEST FOR ADMISSION NO. 35

17 35. Admit Applicant reserved the domain name www.autopiaforums.com on March 4, 2011.

18 REQUEST FOR ADMISSION NO. 36

19 36. Admit Applicant did not operate a web site at the domain name www.autopiaforums.com
20 prior to March 4, 2011.

21 REQUEST FOR ADMISSION NO. 37

22 37. Admit Applicant did not present the mark AUTOPIAFORUMS to the public on the web
23 site at the domain name www.autopiaforums.com before it reserved this domain name.

24 REQUEST FOR ADMISSION NO. 38

25 38. Admit Applicant did not use the mark AUTOPIAFORUMS on the web site at the domain
26 name www.autopiaforums.com before it reserved this domain name on March 4, 2011.

27 REQUEST FOR ADMISSION NO. 39

28 39. Admit Applicant did not use the mark AUTOPIAFORUMS anywhere before it reserved

1 the domain name www.autopiaforums.com on March 4, 2011.

2 REQUEST FOR ADMISSION NO. 40

3 40. Admit Applicant had no trademark right to the mark AUTOPIAFORUMS from use of
4 this mark on the web site at the domain name www.autopiaforums.com before it reserved
5 this domain name on March 4, 2011.

6 REQUEST FOR ADMISSION NO. 41

7 41. Admit Applicant had no trademark right to the mark AUTOPIAFORUMS before March
8 4, 2011.

9 REQUEST FOR ADMISSION NO. 42

10 42. Admit Applicant did not present the mark AUTOPIA FORUM to the public on the web
11 site at the domain name www.autopiaforums.com before it reserved this domain name.

12 REQUEST FOR ADMISSION NO. 43

13 43. Admit Applicant did not use the mark AUTOPIA FORUM on the web site at the domain
14 name www.autopiaforums.com before it reserved this domain name on March 4, 2011.

15 REQUEST FOR ADMISSION NO. 44

16 44. Admit Applicant did not use the mark AUTOPIA FORUM anywhere before it reserved
17 the domain name www.autopiaforums.com on March 4, 2011.

18 REQUEST FOR ADMISSION NO. 45

19 45. Admit Applicant had no trademark right to the mark AUTOPIA FORUM from use of this
20 August 10, 2012 mark on the web site at the domain name www.autopiaforums.com
21 before it reserved this domain name on March 4, 2011.

22 REQUEST FOR ADMISSION NO. 46

23 46. Admit Applicant had no trademark right to the mark AUTOPIA FORUM before March 4,
24 2011.

25 REQUEST FOR ADMISSION NO. 47

26 47. Admit Applicant had no trademark right to the Applicant's Marks before March 4, 2011.

27 REQUEST FOR ADMISSION NO. 48

28 48. Admit Applicant has reserved other domain names which include the term "autopia" and

1 the term "forum" within such domain names.

2 REQUEST FOR ADMISSION NO. 49

3 49. Admit Applicant has not reserved other domain names which include the term "autopia"
4 and the term "forum" within such domain names.

5 REQUEST FOR ADMISSION NO. 50

6 50. Admit Applicant and a company known as "Autogeek" are associated companies.

7 REQUEST FOR ADMISSION NO. 51

8 51. Admit Applicant and a company known as "Autogeek" have common shareholders.

9 REQUEST FOR ADMISSION NO. 52

10 52. Admit "Autogeek" is a fictitious business name for Applicant.

11 REQUEST FOR ADMISSION NO. 53

12 53. Admit Robert McKee is an officer of Applicant.

13 REQUEST FOR ADMISSION NO. 54

14 54. Admit Robert McKee is a shareholder of Applicant.

15 REQUEST FOR ADMISSION NO. 55

16 55. Admit Robert McKee is a person likely to have discoverable information about
17 Applicant's Marks.

18 REQUEST FOR ADMISSION NO. 56

19 56. Admit Robert McKee is the person most likely to have discoverable information about
20 Applicant's Marks.

21 REQUEST FOR ADMISSION NO. 57

22 57. Admit Robert McKee is an employee of Applicant.

23 REQUEST FOR ADMISSION NO. 58

24 58. Admit Robert McKee is CEO of Applicant.

25 REQUEST FOR ADMISSION NO. 59

26 59. Admit Robert McKee is founder of Applicant.

27 REQUEST FOR ADMISSION NO. 60

28 60. Admit Robert McKee is an officer of "Autogeek," the operator of the web site located at

1 the domain name www.autogeek.net.

2 REQUEST FOR ADMISSION NO. 61

3 61. Admit Robert McKee is a shareholder of "Autogeek," the operator of the web site
4 located at the domain name www.autogeek.net.

5 REQUEST FOR ADMISSION NO. 62

6 62. Admit Robert McKee is an officer of "Autogeek," the operator of the web site located at
7 the domain name www.autogeek.net.

8 REQUEST FOR ADMISSION NO. 63

9 63. Admit Robert McKee is an employee of "Autogeek," the operator of the web site located
10 at the domain name www.autogeek.net.

11 REQUEST FOR ADMISSION NO. 64

12 64. Admit Robert McKee is CEO of "Autogeek," the operator of the web site located at the
13 domain name www.autogeek.net.

14 REQUEST FOR ADMISSION NO. 65

15 65. Admit Robert McKee is founder of "Autogeek," the operator of the web site located at
16 the domain name www.autogeek.net.

17 REQUEST FOR ADMISSION NO. 66

18 66. Admit the web site located at the domain name www.autogeek.net is operated by
19 "Autogeek."

20 REQUEST FOR ADMISSION NO. 67

21 67. Admit the web site located at the domain name www.autogeek.net bears the following
22 legend at www.autogeek.net/aboutus.html: "Bob 'Max' McKee, CEO & Founder, Palm
23 Beach Motoring Group."

24 REQUEST FOR ADMISSION NO. 68

25 68. Admit "Autogeek" has advertised on the web site located at the domain name
26 www.autopia.org.

27 REQUEST FOR ADMISSION NO. 69

28 69. Admit "Autogeek" has advertised on the web site located at the domain name

1 www.autopia.org.

2 REQUEST FOR ADMISSION NO. 70

3 70. Admit "Autogeek" has advertised on the web site located at the domain name
4 www.autopia.org before the execution of the Purchase Agreement (dated February 10,
5 2011).

6 REQUEST FOR ADMISSION NO. 71

7 71. Admit "Autogeek" has advertised on the web site located at the domain name
8 www.autopia.org before the execution of the Purchase Agreement (dated February 10,
9 2011).

10 REQUEST FOR ADMISSION NO. 72

11 72. Admit "Autogeek" has advertised on the web site located at the domain name
12 www.autopia.org before it reserved the domain name www.autopiaforums.com on March
13 4, 2011.

14 REQUEST FOR ADMISSION NO. 73

15 73. Admit "Autogeek" has advertised on the web site located at the domain name
16 www.autopia.org before it reserved the domain name www.autopiaforums.com on March
17 4, 2011.

18 REQUEST FOR ADMISSION NO. 74

19 74. Admit "Autogeek" advertised on the web site located at the domain name
20 www.autopia.org before it presented the mark AUTOPIAFORUMS to the public on the
21 web site at the domain name www.autopiaforums.com.

22 REQUEST FOR ADMISSION NO. 75

23 75. Admit "Autogeek" advertised on the web site located at the domain name
24 www.autopia.org before it used the mark AUTOPIAFORUMS on the web site at the
25 domain name www.autopiaforums.com.

26 REQUEST FOR ADMISSION NO. 76

27 76. Admit "Autogeek" advertised on the web site located at the domain name
28 www.autopia.org before it used the mark AUTOPIAFORUMS anywhere.

1 REQUEST FOR ADMISSION NO. 77

2 77. Admit "Autogeek" advertised on the web site located at the domain name
3 www.autopia.org before it had any trademark right to the mark AUTOPIAFORUMS.

4 REQUEST FOR ADMISSION NO. 78

5 78. Admit "Autogeek" advertised on the web site located at the domain name
6 www.autopia.org before it presented the mark AUTOPIA FORUM to the public on the
7 web site at the domain name www.autopiaforums.com.

8 REQUEST FOR ADMISSION NO. 79

9 79. Admit "Autogeek" advertised on the web site located at the domain name
10 www.autopia.org before it used the mark AUTOPIA FORUM on the web site at the
11 domain name www.autopiaforums.com.

12 REQUEST FOR ADMISSION NO. 80

13 80. Admit "Autogeek" advertised on the web site located at the domain name
14 www.autopia.org before it used the mark AUTOPIA FORUM anywhere.

15 REQUEST FOR ADMISSION NO. 81

16 81. Admit "Autogeek" advertised on the web site located at the domain name
17 www.autopia.org before it used had any trademark right to the mark AUTOPIA FORUM.

18 REQUEST FOR ADMISSION NO. 82

19 82. Admit Applicant has advertised on the web site located at the domain name
20 www.autopia.org.

21 REQUEST FOR ADMISSION NO. 83

22 83. Admit Applicant has advertised on the web site located at the domain name
23 www.autopia.org.

24 REQUEST FOR ADMISSION NO. 84

25 84. Admit Applicant has advertised on the web site located at the domain name
26 www.autopia.org before the execution of the Purchase Agreement (dated February 10,
27 2011).

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1 REQUEST FOR ADMISSION NO. 85

2 85. Admit Applicant has advertised on the web site located at the domain name
3 www.autopia.org before the execution of the Purchase Agreement (dated February 10,
4 2011).

5 REQUEST FOR ADMISSION NO. 86

6 86. Admit Applicant has advertised on the web site located at the domain name
7 www.autopia.org before it reserved the domain name www.autopiaforums.com on March
8 4, 2011.

9 REQUEST FOR ADMISSION NO. 87

10 87. Admit Applicant has advertised on the web site located at the domain name
11 www.autopia.org before it reserved the domain name www.autopiaforums.com on March
12 4, 2011.

13 REQUEST FOR ADMISSION NO. 88

14 88. Admit Applicant advertised on the web site located at the domain name www.autopia.org
15 before it presented the mark AUTOPIAFORUMS to the public on the web site at the
16 domain name www.autopiaforums.com.

17 REQUEST FOR ADMISSION NO. 89

18 89. Admit Applicant advertised on the web site located at the domain name www.autopia.org
19 before it used the mark AUTOPIAFORUMS on the web site at the domain name
20 www.autopiaforums.com.

21 REQUEST FOR ADMISSION NO. 90

22 90. Admit Applicant advertised on the web site located at the domain name www.autopia.org
23 before it used the mark AUTOPIAFORUMS anywhere.

24 REQUEST FOR ADMISSION NO. 91

25 91. Admit Applicant advertised on the web site located at the domain name www.autopia.org
26 before it used had any trademark right to the mark AUTOPIAFORUMS.

27 REQUEST FOR ADMISSION NO. 92

28 92. Admit Applicant advertised on the web site located at the domain name www.autopia.org

1 before it presented the mark AUTOPIA FORUM to the public on the web site at the
2 domain name www.autopiaforums.com.

3 REQUEST FOR ADMISSION NO. 93

4 93. Admit Applicant advertised on the web site located at the domain name www.autopia.org
5 before it used the mark AUTOPIA FORUM on the web site at the domain name
6 www.autopiaforums.com.

7 REQUEST FOR ADMISSION NO. 94

8 94. Admit Applicant advertised on the web site located at the domain name www.autopia.org
9 before it used the mark AUTOPIA FORUM anywhere.

10 REQUEST FOR ADMISSION NO. 95

11 95. Admit Applicant advertised on the web site located at the domain name www.autopia.org
12 before it had any trademark right to the mark AUTOPIA FORUM.

13 REQUEST FOR ADMISSION NO. 96

14 96. Admit Applicant knew of Opposer prior to the filing of Applicant's Applications.

15 REQUEST FOR ADMISSION NO. 97

16 97. Admit Applicant knew of Opposer prior to the filing of Applicant's Applications because
17 of its advertising on the web site located at the domain name www.autopia.org.

18 REQUEST FOR ADMISSION NO. 98

19 98. Admit Applicant knew of Opposer prior to the filing of Applicant's Applications because
20 of a business relationship it had with Opposer prior to the filing of Applicant's
21 Applications.

22 REQUEST FOR ADMISSION NO. 99

23 99. Admit Bob McKee knew of Opposer prior to the filing of Applicant's Applications.

24 REQUEST FOR ADMISSION NO. 100

25 100. Admit Bob McKee knew of Opposer prior to the filing of Applicant's Applications
26 because of its advertising on the web site located at the domain name www.autopia.org.

27 REQUEST FOR ADMISSION NO. 101

28 101. Admit Bob McKee knew of Opposer prior to the filing of Applicant's Applications

1 because of a business relationship Applicant had with Opposer prior to the filing of
2 Applicant's Applications.

3 REQUEST FOR ADMISSION NO. 102

4 102. Admit Applicant knew of Opposer's use of the mark AUTOPIA prior to the filing of
5 Applicant's Applications.

6 REQUEST FOR ADMISSION NO. 103

7 103. Admit Applicant knew of Opposer's use of the mark AUTOPIA prior to the filing of
8 Applicant's Applications because of Applicant's advertising on the web site located at the
9 domain name www.autopia.org.

10 REQUEST FOR ADMISSION NO. 104

11 104. Admit Applicant knew of Opposer's use of the mark AUTOPIA prior to the filing of
12 Applicant's Applications because of a business relationship it had with Opposer prior to
13 the filing of Applicant's Applications.

14 REQUEST FOR ADMISSION NO. 105

15 105. Admit Bob McKee knew of Opposer's use of the mark AUTOPIA prior to the filing of
16 Applicant's Applications.

17 REQUEST FOR ADMISSION NO. 106

18 106. Admit Bob McKee knew of Opposer's use of the mark AUTOPIA prior to the filing of
19 Applicant's Applications because of Applicant's advertising on the web site located at the
20 domain name www.autopia.org.

21 REQUEST FOR ADMISSION NO. 107

22 107. Admit Bob McKee knew of Opposer's use of the mark AUTOPIA prior to the filing of
23 Applicant's Applications because of a business relationship it had with Opposer prior to
24 the filing of Applicant's Applications.

25 REQUEST FOR ADMISSION NO. 108

26 108. Admit Applicant paid Opposer to advertise Applicant's goods on the web site located at
27 the domain name www.autopia.org.

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1 REQUEST FOR ADMISSION NO. 109

2 109. Admit Applicant paid Opposer \$2,100.00 in June of 2010 to advertise Applicant's goods
3 on the web site located at the domain name www.autopia.org.

4 REQUEST FOR ADMISSION NO. 110

5 110. Admit Applicant paid Opposer other money in 2010 to advertise Applicant's goods on
6 the web site located at the domain name www.autopia.org.

7 REQUEST FOR ADMISSION NO. 111

8 111. Admit Applicant knows the web site located at the domain name www.autopia.org was
9 owned by Opposer at the time Applicant paid Opposer \$2,100.00 in 2010.

10 REQUEST FOR ADMISSION NO. 112

11 112. Admit Applicant knows the web site located at the domain name www.autopia.org was
12 operated by Opposer at the time Applicant paid Opposer \$2,100.00 in 2010.

13 REQUEST FOR ADMISSION NO. 113

14 113. Admit Applicant knows the web site located at the domain name www.autopia.org
15 presented Opposers Mark to the public at the time Applicant paid Opposer \$2,100.00, in
16 2010.

17 REQUEST FOR ADMISSION NO. 114

18 114. Admit Applicant knows Opposer was using Opposer's Mark on the web site located at
19 the domain name www.autopia.org at the time Applicant paid Opposer \$2,100.00, in
20 2010.

21 REQUEST FOR ADMISSION NO. 115

22 115. Admit Applicant had not yet used Applicant's Marks at the time Applicant paid Opposer
23 \$2,100.00, in 2010.

24 REQUEST FOR ADMISSION NO. 116

25 116. Admit "Autogeek" paid Opposer to advertise Applicant's goods on the web site located at
26 the domain name www.autopia.org.

27 REQUEST FOR ADMISSION NO. 117

28 117. Admit Applicant's applications were filed on November 8, 2011.

1 REQUEST FOR ADMISSION NO. 118

2 118. Admit Applicant's applications were based on intent to use Applicant's Marks in the
3 future, when they were filed on November 8, 2011.

4 REQUEST FOR ADMISSION NO. 119

5 119. Admit Applicant had not used Applicant's Marks at the time Applicant's applications
6 were filed on November 8, 2011.

7 REQUEST FOR ADMISSION NO. 120

8 120. Admit Applicant's Applications were based on intent to use Applicant's Marks in the
9 future, when they were filed on November 8, 2011.

10 REQUEST FOR ADMISSION NO. 121

11 121. Admit Applicant intends to sell its goods under Applicant's Marks using the Internet.

12 REQUEST FOR ADMISSION NO. 122

13 122. Admit Applicant has sold its goods under Applicant's Marks using the Internet.

14 REQUEST FOR ADMISSION NO. 123

15 123. Admit Applicant has sold its goods under Applicant's Marks using the web site located at
16 the domain name www.autopiaforums.com.

17 REQUEST FOR ADMISSION NO. 124

18 124. Admit Applicant intends to sell its goods in the future under Applicant's Marks using the
19 web site located at the domain name www.autopiaforums.com.

20 REQUEST FOR ADMISSION NO. 125

21 125. Admit Applicant is providing services, at www.autopiaforums.com, under the heading
22 "Autopia Forums - Auto Detailing & Car Discussion Forum."

23 REQUEST FOR ADMISSION NO. 126

24 126. Admit Applicant has described some of its services, at www.autopiaforums.com, under
25 the heading "Autopia Forums - Auto Detailing & Car Discussion Forum," with the
26 following words:

27 "You are currently viewing our boards as a guest which gives you limited access
28 to view most discussions and access our other features. By joining our free

community you will have access to post topics, communicate privately with other members (PM), respond to polls, Free Product Giveaways, upload content, your choice of 10% OFF autopia-carcare.com or Free Shipping, access to manufacturer representatives, and access many other special features.”

REQUEST FOR ADMISSION NO. 127

127. Admit that the words found in the Request for Admission immediately preceding this Request is accurately described in your industry as a “forum,” directed to automobile owners (or enthusiasts), which “forum” allows such automobile owners to communicate with the forum and each other.

REQUEST FOR ADMISSION NO. 128

128. Admit that the words found in the Request for Admission immediately before the Request immediately preceding this Request is accurately described in your industry as an “Auto Detailing & Car Discussion Forum.”

REQUEST FOR ADMISSION NO. 129

129. Admit that the service provided at the web site located at the domain name www.autopia.org is accurately described as an “Auto Detailing & Car Discussion Forum.”

REQUEST FOR ADMISSION NO. 130

130. Admit that Applicant provides others with information about auto detailing.

REQUEST FOR ADMISSION NO. 131

131. Admit that Applicant provides information about auto detailing at www.autopiaforums.com.

REQUEST FOR ADMISSION NO. 132

132. Admit that Applicant uses Applicant’s marks at www.autopiaforums.com.

REQUEST FOR ADMISSION NO. 133

133. Admit that Applicant uses Applicant’s marks to provide information about auto detailing at www.autopiaforums.com.

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1 REQUEST FOR ADMISSION NO. 134

2 134. Admit that Applicant provides others with the ability to exchange information about auto
3 detailing.

4 REQUEST FOR ADMISSION NO. 135

5 135. Admit that Applicant provides others with the ability to exchange information about auto
6 detailing at www.autopiaforums.com.

7 REQUEST FOR ADMISSION NO. 136

8 136. Admit that Applicant provides others with the ability to exchange information as
9 Applicant uses Applicant's marks at www.autopiaforums.com.

10 REQUEST FOR ADMISSION NO. 137

11 137. Admit that Applicant provides others with the ability to exchange information about auto
12 detailing as Applicant uses Applicant's marks at www.autopiaforums.com.

13 REQUEST FOR ADMISSION NO. 138

14 138. Admit that Applicant is providing a forum about auto detailing as it provides the services
15 it has identified in Applicant's Applications, i.e.: "Providing on-line forums for the
16 exchange of messages among computer users concerning the cleaning, polishing and
17 detailing of motor vehicles."

18 REQUEST FOR ADMISSION NO. 139

19 139. Admit that Opposer provides a forum about auto detailing.

20 REQUEST FOR ADMISSION NO. 140

21 140. Admit that Opposer provides forum services about auto detailing at www.autopia.org.

22 REQUEST FOR ADMISSION NO. 141

23 141. Admit Applicant knows Opposer to be providing forum services about auto detailing at
24 www.autopia.org.

25 REQUEST FOR ADMISSION NO. 142

26 142. Admit Applicant knew Opposer was providing forum services about auto detailing at
27 www.autopia.org at the time Applicant used www.autopia.org to advertise Applicant's
28 forum services.

1 REQUEST FOR ADMISSION NO. 143

2 143. Admit Applicant knew Opposer was providing forum services about auto detailing under
3 the mark AUTOPIA at the time Applicant used www.autopia.org to advertise Applicant's
4 forum services.

5 REQUEST FOR ADMISSION NO. 144

6 144. Admit Applicant knew Opposer was providing forum services about auto detailing under
7 the mark AUTOPIA at the time Applicant used www.autopia.org to advertise Applicant's
8 forum services under Applicant's mark AUTOGEEK.

9 REQUEST FOR ADMISSION NO. 145

10 145. Admit Opposer is the proper owner of Opposer's Mark.

11 REQUEST FOR ADMISSION NO. 146

12 146. Admit Applicant's Application's should be denied registration under Section 1 of the
13 Trademark Act, 15 U.S.C. Section 1051.

14 REQUEST FOR ADMISSION NO. 147

15 147. Admit any use of Applicant's Marks by Applicant began after Opposer first used
16 Opposer's Mark.

17 REQUEST FOR ADMISSION NO. 148

18 148. Admit Opposer is the owner of superior right and title to Opposer's Mark.

19 REQUEST FOR ADMISSION NO. 149

20 149. Admit Opposer has priority of use of Opposer's Mark over Applicant's use of Applicant's
21 Marks.

22 REQUEST OR ADMISSION NO. 150

23 150. Admit the word "autopia" is a coined term.

24 REQUEST OR ADMISSION NO. 151

25 151. Admit the word "autopia" is a highly distinctive term.

26 REQUEST OR ADMISSION NO. 152

27 152. Admit the word "autopia" is not an English term.

28 REQUEST OR ADMISSION NO. 153

1 153. Admit the word "autopia" is not a term found in an English dictionary.

2 REQUEST OR ADMISSION NO. 154

3 154. Admit the word "autopia" is not a term found in any language.

4 REQUEST OR ADMISSION NO. 155

5 155. Admit the word "autopia" is not a term found in any dictionary.

6 REQUEST OR ADMISSION NO. 156

7 156. Admit the word "autopia" does not describe any ingredient, quality, characteristic,
8 function, feature, or purpose of the services provided under Applicant's Mark.

9 REQUEST OR ADMISSION NO. 157

10 157. Admit the services provided by Applicant under Applicant's Marks are related to services
11 provided by Opposer under Opposer's Mark.

12 REQUEST OR ADMISSION NO. 158

13 158. Admit the some of the services provided by Applicant under Applicant's Marks are
14 related to some of the services provided by Opposer under Opposer's Mark.

15 REQUEST OR ADMISSION NO. 159

16 159. Admit Applicant and Opposer provide some services to the same group of potential
17 consumers.

18 REQUEST OR ADMISSION NO. 160

19 160. Admit Opposer has a prior and better right to Opposer's Mark than Applicant has to
20 Applicant's Marks.

21 REQUEST OR ADMISSION NO. 161

22 161. Admit Opposer's Mark and Applicant's Marks are confusingly similar.

23 REQUEST OR ADMISSION NO. 162

24 162. Admit Opposer's Applications should be denied registration.

25
26 Date: August 10, 2012


Thomas W. Cook, Reg. No. 38,849
Attorney for Applicant
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

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PROOF OF SERVICE

I hereby declare:

I am over the age of 18 years, and am not a party to the within cause. I am employed in Sausalito, California.

My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My mailing address is P.O. Box 1989, Sausalito, California.

On the date first written below, I served a true copy of the attached document entitled:


OPPOSER'S REQUESTS FOR ADMISSIONS, SET ONE

by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

Leo Zucker
Law Office of Leo Zucker
Patents & Trademarks
PO Box 1177
Yorktown Heights, NY 10598

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sausalito, California.

August 10, 2012


Thomas W. Cook

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial No. 85/261,047

4 Mark: AUTOPIA FORUM

5
6 3D INTERNATIONAL, LLC, a
California limited liability company.

7
8 Opposer,

9 v.

10 PALM BEACH MOTORING
ACCESSORIES, INC.,
a Florida corporation

11
12 Applicant.

Opposition No. 91203277

13
14 **OPPOSER'S REQUESTS FOR PRODUCTION**
15 **OF DOCUMENTS AND THINGS, SET ONE**

16 Propounding Party: Opposer, 3D International, LLC

17 Responding Party: Applicant, Palm Beach Motoring Accessories, Inc.

18 Set Number: One

19
20 Pursuant to Fed. R. Civ. P. 34 and 37 C.F.R. §2.120(d), Applicant, requests that
21 Applicant, produce the following documents and things, described below, that are in the
22 possession, custody, or control of Applicant, or that are in the possession, custody, or control of
23 any representative, agent, officer, director, employee, consultant, or attorney of Applicant, or that
24 are in the possession, custody, or control of any other person or entity who has acted or has
25 purported to act on behalf of Applicant.

26 TBMP §409 requires a written response to these Requests for Production of Documents
27 and Things within thirty (30) days hereof.

28 You are requested to produce these documents at the law office of Thomas Cook

1 Intellectual Property Attorneys, 3030 Bridgeway, Suite 425, Sausalito, California 94965, or at
2 such other suitable location as may be agreed upon by counsel for the parties.

3 If you withhold any documents from production in response to these Requests under
4 claim of privilege or immunity from discovery (including, without limitation, any claim of
5 attorney-client privilege, work product privilege, or immunity), state with respect to each
6 document for which a privilege or immunity is claimed, the name of the person who prepared the
7 document, the name of the person who signed the document or over whose signature it was
8 issued, the name of each person to whom it was addressed or distributed, the nature and
9 substance of the document with sufficient particularity to enable it to be identified, the date the
10 document bears, or, if none, the date it was prepared, the physical location of the document and
11 the address of its custodian or custodians, and the basis for the claim of privilege or immunity.

12 These Requests for Production of Documents and Things call for all information which is
13 known or reasonably available to you, including all documents and information in possession of
14 your attorneys, investigators, representatives, or others acting on your behalf or under your
15 direction or control. An answering party must produce and permit the requesting party to inspect
16 and copy all designated documents in the possession, custody, or control of the party upon whom
17 the request is served.

18 DEFINITIONS

- 19 1. "Applicant" means Palm Beach Motoring Accessories, Inc., Applicant in this
20 opposition proceeding.
- 21 2. "Applicant's Marks" means:
 - 22 (i) the words "AUTOPIA FORUM," as these words appear in Application
23 Serial No. 85/261,047, and
 - 24 (ii) the word "AUTOPIAFORUMS," as this word appears in Application
25 Serial No. 85/312,684.
- 26 3. "Applicant's Applications" mean the applications for registration filed by
27 Applicant at the United States Patent and Trademark Office, serial number
28 85/261,047, and serial number 85/312,684, for Applicant's Marks.

- 1 4. "Applicant's Services" means those services identified in Applicant's
2 Applications.
- 3 5. "Opposer" means 3D International, LLC, Opposer in this opposition proceeding.
- 4 6. "Opposer's Marks" means the words "AUTOPIA," as this word appears in
5 Application Serial No. 85/338,384, and "AUTOPIA FORUMS."
- 6 7. "Opposer's Application" means the application for registration filed by Opposer
7 at the United States Patent and Trademark Office, serial number 85/338,384.
- 8 8. "Purchase Agreement" means that certain Domain Name Purchase Agreement
9 dated February 10, 2011 between Applicant and David Ostroff and Lov Finish
10 Care, Inc.
- 11 9. The singular number and masculine gender used herein also means the plural,
12 feminine or neuter as may be appropriate.

13 **REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

14 REQUEST FOR PRODUCTION NO. 1

- 15 1. Produce a copy of Applicant's Memorandum of Association, Articles of Incorporation, or
16 similar formational document.

17 REQUEST FOR PRODUCTION NO. 2

- 18 2. Produce a copy of Applicant's Articles of Association, By-Laws, or similar operational
19 documents.

20 REQUEST FOR PRODUCTION NO. 3

- 21 3. Produce a copy of each document which describes how Applicant promotes each of its
22 services.

23 REQUEST FOR PRODUCTION NO. 4

- 24 4. Produce a copy of Applicant's business plan.

25 REQUEST FOR PRODUCTION NO. 5

- 26 5. Produce copies of the earliest documents which shows Applicant's use of Applicant's
27 Marks for each of the goods and services upon which Applicant has used or uses
28 Applicant's Marks.

1 REQUEST FOR PRODUCTION NO. 6

2 6. Produce a copy of one of Applicant's marketing materials bearing Applicant's Marks for
3 each of the goods and services upon which Applicant has used Applicant's Marks.

4 REQUEST FOR PRODUCTION NO. 7

5 7. Produce a copy of each document which describes, in a general way, the individuals or
6 businesses which Applicant considers are within the markets served by Applicant.

7 REQUEST FOR PRODUCTION NO. 8

8 8. Produce a copy of each trade or service mark search conducted by Applicant.

9 REQUEST FOR PRODUCTION NO. 9

10 9. Produce a copy of all documents which in a general way describe Applicant's markets.

11 REQUEST FOR PRODUCTION NO. 10

12 10. Produce a copy of each marketing material Applicant is presently using to market or
13 promote the services Applicant has identified in Applicant's Applications.

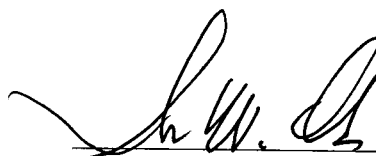
14 REQUEST FOR PRODUCTION NO. 11

15 11. Produce a copy of each marketing material Applicant is presently using to market or
16 promote the services Applicant provides at the web site located at the domain name
17 www.autopiaforums.com.

18 REQUEST FOR PRODUCTION NO. 12

19 12. Produce a copy of at least one document which in a general way describes each of
20 Applicant's markets.

21
22
23 Date: August 10, 2012



Thomas W. Cook, Reg. No. 38,849
Attorney for Opposer
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

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PROOF OF SERVICE

I hereby declare:

I am over the age of 18 years, and am not a party to the within cause. I am employed in Sausalito, California.

My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My mailing address is P.O. Box 1989, Sausalito, California.

On the date first written below, I served a true copy of the attached document entitled:

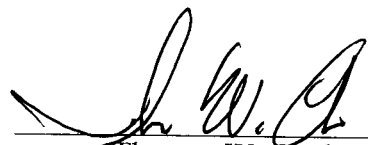
**OPPOSER'S REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS, SET ONE**

by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

Leo Zucker
Law Office of Leo Zucker
Patents & Trademarks
PO Box 1177
Yorktown Heights, NY 10598

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sausalito, California.

August 10, 2012



Thomas W. Cook

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial Nos. 85/261,047 & 85/312,684

4 Marks: AUTOPIA FORUM
5 AUTOPIAFORUMS

6 _____)
7 3D INTERNATIONAL, LLC, a)
California limited liability company.)

8 Opposer,)

9 v.)

10 PALM BEACH MOTORING)
ACCESSORIES, INC.,)
11 a Florida corporation)

12 Applicant.)
13 _____)

Opposition Nos. 91203277 (parent)
 91203279

14
15 **OPPOSER’S INTERROGATORIES, SET TWO**

16 Propounding Party: Opposer, 3D International, LLC

17 Responding Party: Applicant, Palm Beach Motoring Accessories, Inc.

18 Set Number: Two

19
20 Pursuant to Fed. R. Civ. P. 33 and 37 C.F.R. §2.120(d), propounding party Opposer
21 requests Applicant answer and verify each of the following written interrogatories separately and
22 under oath within thirty (30) days hereof. TBMP §407.

23 **DEFINITIONS**

24 1. “Applicant” means Palm Beach Motoring Accessories, Inc., Applicant in this
25 opposition proceeding.

26 2. “Applicant’s Marks” means:

27 (i) the words “AUTOPIA FORUM,” as these words appear in Application Serial
28 No. 85/261,047, and

(ii) the word “AUTOPIAFORUMS,” as this word appears in Application Serial No. 85/312,684.

3. “Applicant’s Applications” mean the applications for registration filed by Applicant at the United States Patent and Trademark Office, serial number 85/261,047, and serial number 85/312,684, for Applicant’s Marks.
4. “Applicant’s Services” means those services identified in Applicant’s Applications.
5. “Opposer” means 3D International, LLC, Opposer in this opposition proceeding.
6. “Opposer’s Marks” means the words “AUTOPIA,” as this word appears in Application Serial No. 85/338,384, and “AUTOPIA FORUMS.”
7. “Opposer’s Application” means the application for registration filed by Opposer at the United States Patent and Trademark Office, serial number 85/338,384.
8. “Purchase Agreement” means that certain Domain Name Purchase Agreement dated February 10, 2011 between Applicant and David Ostroff and Lov Finish Care, Inc.
9. The singular number and masculine gender used herein also means the plural, feminine or neuter as may be appropriate.
10. These interrogatories call for all information (including information contained in writing) which is best known or reasonably available to you, including all information in possession of your attorneys or investigators or representatives, or others acting on your behalf or under your direction or control.
11. Unless specified to the contrary, in answering these interrogatories, you are to provide all information, data, and facts known or reasonably available to you through the date you file your response hereto. When an exact date called for by an interrogatory is not known to you, give the most accurate, approximate date of the event or item described, indicating that it is approximate.
12. When you are asked to “Identify” a person (including a juridical person) or a “user,” state, for each such person:

- a. The full name of the person,
 - b. All positions and titles (if any), together with relevant dates held by said persons, and
 - c. The present business address of such persons, or the person's residential address if the business address is unknown.
13. When you are asked to "Identify" a judicial proceeding, arbitration, mediation, or opposition, state, for each such proceeding:
 - a. The full name of the adverse party in such judicial proceeding, arbitration, mediation, or opposition,
 - b. The full name of the action in such judicial proceeding, arbitration, mediation, or opposition.
 - c. The full name of the court, arbitration panel, mediation panel, or other deciding body, and
 - d. The date of filing such judicial proceeding, arbitration, mediation, or opposition.
14. When you are asked to "Identify" a contract, including any contract which comprises a license to use Applicant's Marks, state, for each such contract:
 - a. The full names of the parties to such contract,
 - b. The execution date of such contract,
 - c. The character of such contract, including what the contract is or was meant to accomplish.
 - d. Which of Applicant's Marks have been licensed, if any.
12. When you are asked to "Identify" an infringement, state, for each such infringement:
 - a. Whether Applicant has made a demand on any other entity based on a claim of infringement of one of Applicant's Marks.
 - b. Whether another entity has made a demand on Applicant, or its licensee if any, based on a claim of infringement by one of Applicant's Marks.

1 c. The name of the adverse party with whom Applicant was dealing.

2 d. The date and nature of the demand.

3
4 **INTERROGATORIES**

5 INTERROGATORY NO. 19

6 19. State the dates when Applicant began advertising at the Internet web site with domain
7 name "www.autopia.org." and when Applicant ceased advertising at that web site.


8 INTERROGATORY NO. 20

9 20. Identify the person who made first made contact with the "Moderator" of the forum at the
10 Internet web site with domain name "www.autopia.org," and state when such person first
11 discussed the engagement of that Moderator to "moderate" the web site with domain
12 name "http://www.autopiaforums.com."

13 INTERROGATORY NO. 21

14 21. State why the "Moderator" of the web site with domain name
15 "http://www.autopiaforums.com" is called "The Mayor."

16
17
18 Date: October 2, 2012

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Thomas W. Cook, Reg. No. 38,849
Attorney for Applicant
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

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3 **PROOF OF SERVICE**

4 I hereby declare:

5 I am over the age of 18 years, and am not a party to the within cause. I am employed in
6 Sausalito, California.

7 My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My
8 mailing address is P.O. Box 1989, Sausalito, California.

9 On the date first written below, I served a true copy of the attached document entitled:


10 **OPPOSER'S INTERROGATORIES, SET TWO**

11 by placing it in a sealed envelope and depositing it in the United States mail, first class postage
12 fully prepaid, addressed to the following:

13 Leo Zucker
14 Law Office of Leo Zucker
15 Patents & Trademarks
16 PO Box 1177
17 Yorktown Heights, NY 10598

18 I declare under penalty of perjury that the foregoing is true and correct. Executed at
19 Sausalito, California.

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28
October 3, 2012


Thomas W. Cook

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial Nos. 85/261,047 & 85/312,684

4 Marks: AUTOPIA FORUM
5 AUTOPIAFORUMS

6 3D INTERNATIONAL, LLC, a
7 California limited liability company.

8 Opposer,

9 v.

10 PALM BEACH MOTORING
11 ACCESSORIES, INC.,
a Florida corporation

12 Applicant.

Opposition Nos. 91203277 (parent)
91203279

14 **OPPOSER'S REQUESTS FOR ADMISSIONS, SET TWO**

15 Propounding Party: Opposer, 3D International, LLC

16 Responding Party: Applicant, Palm Beach Motoring Accessories, Inc.

17 Set Number: Two

18 Pursuant to Fed. R. Civ. P. 36, these Requests for Admissions call for information which
19 is known or reasonably available to you, including all information in possession of your
20 attorneys, investigators, representative, or others acting on your behalf or under your direction or
21 control. An answering party may not give lack of information or knowledge as a reason for
22 failure to admit or deny, unless the party states that the party has made reasonable inquiry, and
23 that the information known or readily obtainable by the party is insufficient to enable the party to
24 admit or deny. Unless specified to the contrary, in answering these Requests for Admissions,
25 you are to provide responses based on all information, data, and facts known or reasonably
26 available to you through the date you file your responses hereto.

27 Propounding party, requests that responding party, answer each of the following written
28

1 Requests for Admissions separately and under oath within thirty (30) days hereof. TBMP §411.
2

3 **DEFINITIONS**

- 4 1. “Applicant” means Palm Beach Motoring Accessories, Inc., Applicant in this
5 opposition proceeding.
- 6 2. “Applicant’s Marks” means:
7 (i) the words “AUTOPIA FORUM,” as these words appear in Application Serial
8 No. 85/261,047, and
9 (ii) the word “AUTOPIAFORUMS,” as this word appears in Application Serial
10 No. 85/312,684.
- 11 3. “Applicant’s Applications” mean the applications for registration filed by
12 Applicant at the United States Patent and Trademark Office, serial number
13 85/261,047, and serial number 85/312,684, for Applicant’s Marks.
- 14 4. “Applicant’s Services” means those services identified in Applicant’s
15 Applications.
- 16 5. “Opposer” means 3D International, LLC, Opposer in this opposition proceeding.
- 17 6. “Opposer’s Marks” means the words “AUTOPIA,” as this word appears in
18 Application Serial No. 85/338,384, and “AUTOPIA FORUMS.”
- 19 7. “Opposer’s Application” means the application for registration filed by Opposer
20 at the United States Patent and Trademark Office, serial number 85/338,384.
- 21 8. “Purchase Agreement” means that certain Domain Name Purchase Agreement
22 dated February 10, 2011, between Applicant and David Ostroff and Lov Finish
23 Care, Inc.
- 24 9. The singular number and masculine gender used herein also means the plural,
25 feminine or neuter as may be appropriate.
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28

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 163

163. Admit Applicant chose to include “autopiaforums” within the domain name of Applicant’s Internet web site “www.autopiaforums” because the web site “www.autopia.org” is a well known forum for collaboration and knowledge based services.

REQUEST FOR ADMISSION NO. 164

164. Admit Applicant chose to include “autopiaforums” within the domain name of Applicant’s Internet web site “www.autopiaforums” because the web site “www.autopia.org” has a reputation in the field of automobile information.

REQUEST FOR ADMISSION NO. 165

165. Admit Applicant chose to include “autopiaforums” within the domain name of Applicant’s Internet web site “www.autopiaforums” after Applicant determined it could not purchase the domain name “www.autopia.org.”

REQUEST FOR ADMISSION NO. 166

166. Admit Applicant chose to include “autopiaforums” within the domain name of Applicant’s Internet web site “www.autopiaforums” in 2009.

REQUEST FOR ADMISSION NO. 167

167. Admit Applicant chose to include “autopiaforums” within the domain name of Applicant’s Internet web site “www.autopiaforums” after Applicant discovered it could not purchase the domain name “www.autopia.org.”

REQUEST FOR ADMISSION NO. 168

168. Admit Applicant chose to include “autopiaforums” within the domain name of Applicant’s Internet web site “www.autopiaforums” after Applicant discovered Opposer already owned the domain name “www.autopia.org.”

REQUEST FOR ADMISSION NO. 169

169. Admit the representative of Applicant, Robert McKee, acknowledged Opposer purchased the domain name “www.autopia.org” before Applicant could purchase the domain name

1 “www.autopia.org.”

2 REQUEST FOR ADMISSION NO. 170

3 170. Admit Robert McKee, at a SEMA show, acknowledged Opposer purchased the domain
4 name “www.autopia.org” before Applicant could purchase the domain name
5 “www.autopia.org.”

6 REQUEST FOR ADMISSION NO. 171

7 171. Admit Applicant purchased the domain name “www.autopia-carcare.com” was to give
8 Applicant access for an opportunity to create a forum.

9 REQUEST FOR ADMISSION NO. 172

10 172. Admit Applicant purchased the domain name “www.autopia-carcare.com” was to give
11 Applicant access for an opportunity to create an “autopia” forum.

12 REQUEST FOR ADMISSION NO. 173

13 173. Admit Applicant knew that buying the domain name “autopia-carcare.com” would give
14 Applicant a chance to create a forum similar to that found at “www.autopia.org.”

15 REQUEST FOR ADMISSION NO. 175

16 175. Admit Applicant knew that buying the domain name “www.autopia-carcare.com” would
17 give Applicant a chance to create a forum similar to that found at “www.autopia.org” to
18 recover the missed opportunity to buy “www.autopia.org.”

19 REQUEST FOR ADMISSION NO. 176

20 176. Admit Applicant’s intention in buying the domain name “www.autopia-carcare.com” was
21 to build a web site which would divert traffic from “www.autopia.org.”

22 REQUEST FOR ADMISSION NO. 177

23 177. Admit Applicant purchased the domain name “www.autopiaforums.com” was to give
24 Applicant access for an opportunity to create a forum.

25 REQUEST FOR ADMISSION NO. 178

26 178. Admit Applicant purchased the domain name “www.autopiaforums.com” was to give
27 Applicant access for an opportunity to create an “autopia” forum.

28 REQUEST FOR ADMISSION NO. 179

1 179. Admit Applicant knew that buying the domain name "www.autopiaforums.com" would
2 give Applicant a chance to create a forum similar to that found at "www.autopia.org."

3 REQUEST FOR ADMISSION NO. 180

4 180. Admit Applicant knew that buying the domain name "www.autopiaforums.com" would
5 give Applicant a chance to create a forum similar to that found at "www.autopia.org" to
6 recover the missed opportunity to buy "www.autopia.org."

7 REQUEST FOR ADMISSION NO. 181

8 181. Admit Applicant's intention in buying the domain name "www.autopiaforums.com" was
9 to build a web site which would divert traffic from "www.autopia.org."

10 REQUEST FOR ADMISSION NO. 182

11 182. Admit Applicant's intention in hiring the "Moderator" from Opposer was to make
12 members of the web site at "www.autopia.org" believe that "www.autopiaforums.com"
13 was the associated with the web site at "www.autopia.org."

14
15
16
17 Date: October 2, 2012



Thomas W. Cook, Reg. No. 38,849
Attorney for Applicant
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

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PROOF OF SERVICE

I hereby declare:

I am over the age of 18 years, and am not a party to the within cause. I am employed in Sausalito, California.

My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My mailing address is P.O. Box 1989, Sausalito, California.

On the date first written below, I served a true copy of the attached document entitled:

OPPOSER'S REQUESTS FOR ADMISSIONS, SET TWO

by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

Leo Zucker
Law Office of Leo Zucker
Patents & Trademarks
PO Box 1177
Yorktown Heights, NY 10598

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sausalito, California.

October 3, 2012



Thomas W. Cook

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial Nos. 85/261,047 & 85/312,684

4 Marks: AUTOPIA FORUM
5 AUTOPIAFORUMS

6 _____)
7 3D INTERNATIONAL, LLC, a)
8 California limited liability company.)

9 Opposer,)

10 v.)

11 PALM BEACH MOTORING)
12 ACCESSORIES, INC.,)
13 a Florida corporation)

14 Applicant.)
15 _____)

Opposition Nos. 91203277 (parent)
 91203279

16 **OPPOSER'S REQUESTS FOR PRODUCTION**
17 **OF DOCUMENTS AND THINGS, SET TWO**

18 Propounding Party: Opposer, 3D International, LLC

19 Responding Party: Applicant, Palm Beach Motoring Accessories, Inc.

20 Set Number: Two

21 Pursuant to Fed. R. Civ. P. 34 and 37 C.F.R. §2.120(d), Applicant, requests that
22 Applicant, produce the following documents and things, described below, that are in the
23 possession, custody, or control of Applicant, or that are in the possession, custody, or control of
24 any representative, agent, officer, director, employee, consultant, or attorney of Applicant, or that
25 are in the possession, custody, or control of any other person or entity who has acted or has
26 purported to act on behalf of Applicant.

27 TBMP §409 requires a written response to these Requests for Production of Documents
28 and Things within thirty (30) days hereof.

1 You are requested to produce these documents at the law office of Thomas Cook
2 Intellectual Property Attorneys, 3030 Bridgeway, Suite 425, Sausalito, California 94965, or at
3 such other suitable location as may be agreed upon by counsel for the parties.

4 If you withhold any documents from production in response to these Requests under
5 claim of privilege or immunity from discovery (including, without limitation, any claim of
6 attorney-client privilege, work product privilege, or immunity), state with respect to each
7 document for which a privilege or immunity is claimed, the name of the person who prepared the
8 document, the name of the person who signed the document or over whose signature it was
9 issued, the name of each person to whom it was addressed or distributed, the nature and
10 substance of the document with sufficient particularity to enable it to be identified, the date the
11 document bears, or, if none, the date it was prepared, the physical location of the document and
12 the address of its custodian or custodians, and the basis for the claim of privilege or immunity.

13 These Requests for Production of Documents and Things call for all information which is
14 known or reasonably available to you, including all documents and information in possession of
15 your attorneys, investigators, representatives, or others acting on your behalf or under your
16 direction or control. An answering party must produce and permit the requesting party to inspect
17 and copy all designated documents in the possession, custody, or control of the party upon whom
18 the request is served.

21 DEFINITIONS

- 22 1. "Applicant" means Palm Beach Motoring Accessories, Inc., Applicant in this
23 opposition proceeding.
- 24 2. "Applicant's Marks" means:
- 25 (i) the words "AUTOPIA FORUM," as these words appear in Application
26 Serial No. 85/261,047, and
- 27 (ii) the word "AUTOPIAFORUMS," as this word appears in Application
28 Serial No. 85/312,684.

1 REQUEST FOR PRODUCTION NO. 15

2 15. Produce a copy of each contract between Mr. David Bynon and Applicant, and a copy of
3 each contract between Mr. David Bynon and the operator of the web site at
4 “http://www.autopiaforums.com.”
5

6
7 Date: October 2, 2012



Thomas W. Cook, Reg. No. 38,849
Attorney for Opposer
3030 Bridgeway, Suite 425-430
Sausalito, California 94965
Telephone: 415-339-8550

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PROOF OF SERVICE

I hereby declare:

I am over the age of 18 years, and am not a party to the within cause. I am employed in Sausalito, California.

My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My mailing address is P.O. Box 1989, Sausalito, California.

On the date first written below, I served a true copy of the attached document entitled:


**OPPOSER'S REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS, SET TWO**

by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

Leo Zucker
Law Office of Leo Zucker
Patents & Trademarks
PO Box 1177
Yorktown Heights, NY 10598

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sausalito, California.

October 3, 2012


Thomas W. Cook

Subject: Re: 3D v. PBMA TM Oppositions
From: Thomas Cook <tom@thomascooklaw.com>
Date: 12/17/2012 5:58 PM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Serra Goren <serra@3dproducts.com>, Tunch Goren <tg@3dproducts.com>

Leo:

Please find 3D's response to PBMA's proposal attached, a request for status regarding discovery, and a complimentary copy of its response to PBMA's Motion for Summary Judgment (with Declaration of Goren).

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

On 12/13/2012 11:04 AM, Thomas Cook wrote:

Leo:

Received, with thanks, and back shortly.

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

On 12/13/2012 8:25 AM, Leo Zucker wrote:

Dear Thomas,

Further to my e-mail of Nov 8, below, we are still awaiting a response by 3D to PBMA's proposed settlement terms that were e-mailed to you on Nov 6.

Recall that PBMA stipulated to allow 3D an additional 30 days to file a response to the pending SJ motion, with the understanding that the parties had arrived at substantially the same settlement terms when they met at the SEMA show, and that a final settlement would be well underway if not concluded before the 30-day term expires on December 17. See my Nov 8 e-mail, below.

Subject: 3D v. PBMA TM Oppositions
From: "Leo Zucker" <lzpatents@gmail.com>
Date: 12/19/2012 7:30 AM
To: <tom@thomascooklaw.com>

Thomas,

Thank you for 3D's counterproposal for settlement and copy of 3D's response to the pending sj motion. We will respond to both in due course. Concerning the status of discovery, I believe discovery has been suspended in view of the motion, and that the Board will reset the time for PBMA to respond to all outstanding discovery requests should the Board deny the motion. See 37 C.F.R. 2.127(d) and the Board's Suspension Order.

Regards,

Leo

Law Office of Leo Zucker
Patent & Trademark Law
PO Box 1177
Yorktown Heights, NY 10598

Tel (914) 302-2460
Fax (914) 302-2459

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-----Original Message-----

From: Thomas Cook [mailto:tom@thomascooklaw.com]
Sent: Monday, December 17, 2012 8:59 PM
To: Leo Zucker
Subject: Re: 3D v. PBMA TM Oppositions

Leo:

Please find 3D's response to PBMA's proposal attached, a request for status regarding discovery, and a complimentary copy of its response to PBMA's Motion for Summary Judgment (with Declaration of Goren).

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys P.O. Box 1989, 3030 Bridgeway, Suite 425-430 Sausalito, California 94965-1989
Telephone: 415-339-8550

Subject: Re: 3D v. PBMA TM Oppositions

From: Thomas Cook <tom@thomascooklaw.com>

Date: 12/19/2012 3:22 PM

To: Leo Zucker <lzpatents@gmail.com>

BCC: "khorne >> Kay Horne" <kay@thomascooklaw.com>, Tunch Goren <tg@3dproducts.com>, serra Goren <serra@3dproducts.com>

Leo:

Our discovery and MSJ activity looks like this:

1. On August 10, 2012, we served 3D's Discovery, Set One. Responses due: September 14, 2012.
2. On August 27, 2012, we reset the deadline for responses to 3D's Discovery, Set One, by agreement, and consistent with your request, 30 days, to October 14, 2012.
3. On October 3, 2012, we served 3D's Discovery, Set Two. Responses due: November 7, 2012.
4. On October 15, 2012, PBMP served its Motion for Summary Judgement.
5. On December 12, 2012, the Board Suspended these cases.

Neither 37 C.F.R. 2.127(d) nor the Board's Suspension Order specifically address discovery already served. However, the TBMP does address discovery and MSJ suspension, at its Section 528.03, Suspension Pending Determination of Motion. The relevant passage is:

"The filing of a summary judgment motion does not, in and of itself, automatically suspend proceedings in a case; rather, proceedings are suspended only when the Board issues an order to that effect. [Note 2.] However, on a case-by-case basis, the Board may find that the filing of a motion for summary judgment provides a party with good cause for not complying with an otherwise outstanding obligation, for example, responding to discovery requests."

We interpret this section to require PBMP's responses to 3D's Discovery, as reset by agreement and due October 14, 2012 (Set One), and as originally and still due November 7, 2012 (Set Two). Each of these due dates precede the Board Suspension Order of December 12, 2012.

Please advise.

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys

P.O. Box 1989, 3030 Bridgeway, Suite 425-430

Sausalito, California 94965-1989

Telephone: 415-339-8550

On 12/19/2012 7:30 AM, Leo Zucker wrote:

Thomas,

Thank you for 3D's counterproposal for settlement and copy of 3D's response to the pending sj

Subject: 3D v. PBMA TM Oppositions
From: "Leo Zucker" <lzpatents@gmail.com>
Date: 12/21/2012 1:54 PM
To: <tom@thomascooklaw.com>

Thomas,

Concerning your item 2 below, October 14, 2012, was a Sunday. Therefore a response was due on Monday October 15, *i.e.*, the filing date of PBMA's pending motion. See 37 C.F.R. § 2.196.

I interpret the below quoted passage from the TBMP to confirm that once issued, the Board's suspension order is effective as of the *filing date* of a SJ motion, and that the filing of the motion provides good cause for the movant not to respond to any discovery requests that are outstanding on the date the motion is filed.

If the Board denies the motion, it should reset all dates including the term for responding to any outstanding discovery requests by either party.

Regards,
Leo

Law Office of Leo Zucker
Patent & Trademark Law
PO Box 1177
Yorktown Heights, NY 10598

Tel (914) 302-2460
Fax (914) 302-2459

This e-mail and any attached files or items are proprietary and subject to attorney-client or work product privileges. The use or disclosure of this communication by anyone other than a designated addressee is unauthorized. If you are not an intended recipient, kindly notify the sender by reply e-mail, and destroy this communication and any copies thereof in your possession.

-----Original Message-----

From: Thomas Cook [<mailto:tom@thomascooklaw.com>]
Sent: Wednesday, December 19, 2012 6:23 PM
To: Leo Zucker
Subject: Re: 3D v. PBMA TM Oppositions

Leo:

Our discovery and MSJ activity looks like this:

1. On August 10, 2012, we served 3D's Discovery, Set One. Responses due: September 14, 2012.
2. On August 27, 2012, we reset the deadline for responses to 3D's Discovery, Set One, by agreement, and consistent with your request, 30 days, to October 14, 2012.
3. On October 3, 2012, we served 3D's Discovery, Set Two. Responses due: November 7, 2012.
4. On October 15, 2012, PBMP served its Motion for Summary Judgement.
5. On December 12, 2012, the Board Suspended these cases.

Subject: Re: 3D v. PBMA TM Oppositions
From: Thomas Cook <tom@thomascooklaw.com>
Date: 12/22/2012 12:51 PM
To: Leo Zucker <lzpatents@gmail.com>

Leo:

Board suspension with SJ motion as of the filing date of the motion makes an order suspending the cases superfluous. TBMP 528.03 could just say, with much greater economy, "Cases are suspended upon filing of SJ Motion."

Board suspension with SJ motion as of the filing date of the motion also makes "good cause for not complying with an otherwise outstanding (discovery) obligation" superfluous. TBMP 528.03 could just say "The filing of SJ Motion is good cause to suspend an otherwise outstanding (discovery) obligation." In passing, I wonder how the movant secures a determination of "good cause" not to respond to discovery requests "...on a case-by-case basis..." (another superfluous phrase, if you are correct). Should the movant request a determination of "good cause" in the SJ motion? Should the movant cite the mere filing of the SJ motion as "good cause," or provide other grounds in support of "good cause"? Or does the movant request a determination of "good cause" in response to a subsequent motion to compel?

McCarthy opines: "Upon the filing of a motion...for summary judgment or any motion that has the potential for disposing of the case, the case will be suspended by the Board as to all other matters such that no party ~~should~~ file any paper not directly relevant to that motion. /But the mere filing of such potentially dispositive motion does not itself relieve the parties from responding to discovery requests./ Under the rule, the motion itself does not suspend proceedings, only an order by the Board does so." Citing /Giant Food, Inc. v. Standard Terry Mills, Inc/. 229 U.S.P.Q. 955 (T.T.A.B. 1986).

3D requests PBMA respond to 3D's outstanding discovery requests. Is PBMA taking the position that it will not provide responses to 3D's outstanding discovery now?

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

On 12/21/2012 1:54 PM, Leo Zucker wrote:

Thomas,

Concerning your item 2 below, October 14, 2012, was a Sunday. Therefore a response was due on Monday October 15, /i.e.,/ the filing date of PBMA's pending motion. See 37 C.F.R. § 2.196.

I interpret the below quoted passage from the TBMP to confirm that once issued, the Board's suspension order is effective as of the */filing date/* of a SJ motion, and that the filing of the motion provides good cause for the movant not to respond to any discovery requests that are outstanding on the date the motion is filed.

Subject: Re: 3D v. PBMA TM Oppositions
From: Thomas Cook <tclaws@pacbell.net>
Date: 1/7/2013 1:24 PM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Tunch Goren <tg@3dproducts.com>, Serra Goren <serra@3dproducts.com>

Leo:

This follows my earlier email of today on receipt of the hardcopy of PBMA's Reply, and PBMA's soon to come response to 3D's latest counterproposal.

We have not yet received from you a response to my December 22, 2012, email (text below) about PBMA's responses to 3D's outstanding discovery. Please advise whether PBMA is refusing to respond to 3D's discovery, which was served and due for response prior to the filing of PBMA's Motion for Summary Judgment.

Regards,

Thomas

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
United States of America
Telephone: 415-339-8550
tom@thomascooklaw.com

On 12/22/2012 12:51 PM, Thomas Cook wrote:

Leo:

Board suspension with SJ motion as of the filing date of the motion makes an order suspending the cases superfluous. TBMP 528.03 could just say, with much greater economy, "Cases are suspended upon filing of SJ Motion."

Board suspension with SJ motion as of the filing date of the motion also makes "good cause for not complying with an otherwise outstanding (discovery) obligation" superfluous. TBMP 528.03 could just say "The filing of SJ Motion is good cause to suspend an otherwise outstanding (discovery) obligation." In passing, I wonder how the movant secures a determination of "good cause" not to respond to discovery requests "...on a case-by-case basis..." (another superfluous phrase, if you are correct). Should the movant request a determination of "good cause" in the SJ motion? Should the movant cite the mere filing of the SJ motion as "good cause," or provide other grounds in support of "good cause"? Or does the movant request a determination of "good cause" in response to a subsequent motion to compel?

McCarthy opines: "Upon the filing of a motion...for summary judgment or any motion that has the potential for disposing of the case, the case will be suspended by the Board as to all other matters such that no party should file any paper not directly relevant to that motion. /But the mere filing of such potentially dispositive motion does not itself relieve the parties from responding to discovery requests./ Under the rule, the motion itself does not suspend proceedings, only an order by the Board does so." Citing /Giant Food, Inc. v. Standard Terry Mills, Inc/. 229 U.S.P.Q. 955 (T.T.A.B. 1986).

3D requests PBMA respond to 3D's outstanding discovery requests. Is PBMA taking the position that it will not provide responses to 3D's outstanding discovery now?

Subject: Re: 3D v. PBMA TM Oppositions
From: Thomas Cook <tom@thomascooklaw.com>
Date: 1/15/2013 10:32 AM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Tunch Goren <tg@3dproducts.com>, serra Goren <serra@3dproducts.com>

Leo:

While preparing discovery responses make take additional time, we think the question I asked December 22, 2012, renewed January 7, 2013, can be answered without significant delay. Repeating that question here, is PBMA is refusing to respond to 3D's discovery, which was served and due for response prior to the filing of PBMA's Motion for Summary Judgment?

Best regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

.

On 1/8/2013 12:24 PM, Thomas Cook wrote:

Received, with thanks,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

.

On 1/7/2013 1:35 PM, Leo Zucker wrote:

Thomas,

Thank you for your acknowledgment earlier today concerning PBMA's Reply brief.

As to the discovery matter, we will respond to your 12/22 inquiry shortly.

Best regards,

Leo

Subject: Re: 3D v. PBMA TM Oppositions
From: Thomas Cook <tom@thomascooklaw.com>
Date: 1/21/2013 2:53 PM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Tunch Goren <tg@3dproducts.com>, serra Goren <serra@3dproducts.com>

Leo:

May I have PBMA's response to our enquiry? Please advise.

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

On 1/15/2013 10:32 AM, Thomas Cook wrote:

Leo:

While preparing discovery responses make take additional time, we think the question I asked December 22, 2012, renewed January 7, 2013, can be answered without significant delay. Repeating that question here, is PBMA is refusing to respond to 3D's discovery, which was served and due for response prior to the filing of PBMA's Motion for Summary Judgment?

Best regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

On 1/8/2013 12:24 PM, Thomas Cook wrote:

Received, with thanks,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989

Subject: Opposition - 91203277 (Parent) - 3D International LLC v. Palm Beach Motoring Accessories, Inc. - 85261047 - Outstanding Discovery Responses Overdue
From: Thomas Cook <tom@thomascooklaw.com>
Date: 1/22/2013 1:26 PM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Tunch Goren <tg@3dproducts.com>, Serra Goren <serra@3dproducts.com>

Leo:

To summarize the email thread appearing below:

On December 17, 2012, I forwarded our latest proposal, and response to PBMA's Motion for Summary Judgment ("Motion"), and requested from you a status regarding outstanding discovery served on PBMA on August 10, 2012 (Set One), and October 3, 2012 (Set Two). I attach a copy of our transmittal and request.

On December 19, 2012, you advised you thought discovery has been suspended in view of the Motion.

On December 19, 2012, I summarized our discovery and Motion activity with the follow five enumerated activities:

1. On August 10, 2012, we served 3D's Discovery, Set One. Responses due: September 14, 2012.
2. On August 27, 2012, we reset the deadline for responses to 3D's Discovery, Set One, by agreement, and consistent with your request, 30 days, to October 14, 2012.
3. On October 3, 2012, we served 3D's Discovery, Set Two. Responses due: November 7, 2012.
4. On October 15, 2012, PBMP served its Motion for Summary Judgement.
5. On December 12, 2012, the Board Suspended these cases.

I also advised on the requirements of TBMP Section 528.03, Suspension Pending Determination of Motion. This section says: "The filing of a summary judgment motion does not, in and of itself, automatically suspend proceedings in a case; rather, proceedings are suspended only when the Board issues an order to that effect. [Note 2.] However, on a case-by-case basis, the Board may find that the filing of a motion for summary judgment provides a party with good cause for not complying with an otherwise outstanding obligation, for example, responding to discovery requests." You did not say my summary of our discovery and Motion activity is incorrect, and you did not say TBMP Section 528.03 does not control PBMA's obligation to provide responses to discovery.

On December 21, 2012, you opined: "I interpret the below quoted passage from the TBMP to confirm that once issued, the Board's suspension order is effective as of the /filing date/ of a SJ motion, and that the filing of the motion provides good cause for the movant not to respond to any discovery requests that are outstanding on the date the motion is filed." This appears to be your most definite statement about PBMA's discovery obligations, and we now understand PBMA's position to be that it will not now respond to 3D's discovery requests served prior to the filing of PBMA's Motion.

On December 22, 2012, I advised of McCarthy's view that "Upon the filing of a motion...for summary judgment or any motion that has the potential for disposing of the case, the case will be suspended by the Board as to all other matters such that no party should file any paper not directly relevant to that motion. But the mere filing of such potentially dispositive motion does not itself relieve the parties from responding to discovery requests. Under the rule, the motion itself does not suspend proceedings, only an order by the Board does so." Citing *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 U.S.P.Q. 955 (T.T.A.B. 1986). I then requested PBMA's position.

On January 07, 2013, I renewed my request for PBMA's position on outstanding discovery, and you advised by return email on that same day "As to the discovery matter, we will respond to your 12/22 inquiry shortly."

On January 15, 2013, I renewed my request for PBMA's position on outstanding discovery.

On January 21, 2013, I renewed my request for PBMA's position on outstanding discovery.

On January 21, 2013, you advised: "3D's discovery was not due for response "prior" to filing of PBMA's motion for summary judgment." You did not advise on PBMA's position regarding 3D's discovery /served/ prior to the filing of PBMA's Motion.

We now understand PBMA's position remains as set forth most clearly in your December 21, 2012, email. That is, PBMA's position is that it will not now respond to 3D's discovery requests served prior to the filing of PBMA's Motion, despite this course of discussion about those requests, despite our numerous requests for PBMA's position on discovery, and despite 3D's requests for responses to 3D's two sets of discovery served prior to the filing of the Motion. With this email, we now again ask for those responses to discovery.

This factual summary will serve as the factual basis for our motion for sanctions for failure to respond to discovery. Kindly advise if you think this factual summary is incorrect in any particular.

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys

P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

Applicant's position regarding responses to outstanding discovery

Applicant's attorney does not answer the question of Opposer's attorney directly. The time line of service of discovery shows that all discovery was served prior to MSJ, and at least some discovery was due prior to MSJ

On 1/21/2013 3:19 PM, Leo Zucker wrote:

Thomas,

In reply to your question below, "[I]s PBMA ... refusing to respond to 3D's discovery, which was served and due for response /prior/ to the filing of PBMA's Motion for Summary Judgment?" (emphasis added) -

As we explained on at least two prior occasions, 3D's discovery was not due for response "prior" to filing of PBMA's motion for summary judgment. And again, if the pending SJ motion is denied, the Board will reset the date for responding to outstanding discovery requests, and then PBMA will respond or otherwise move timely with respect to 3D's outstanding requests.

Concerning 3D's settlement terms proposed Dec 17, and in the interest of judicial economy, PBMA has decided to wait for the Board's decision on the pending SJ motion rather than to continue with settlement offers/counteroffers at this time.

Best regards,

Leo

/Law Office of Leo Zucker /

/Patent & Trademark Law /

Applicant discontinues settlement discussion for "judicial economy" (?)

Subject: Re: Opposition - 91203277 (Parent) - 3D International LLC v. Palm Beach Motoring Accessories, Inc. - 85261047 - Outstanding Discovery Responses Overdue
From: Thomas Cook <tclaws@pacbell.net>
Date: 4/17/2013 4:30 PM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Tunch Goren <tg@3dproducts.com>, Serra Goren <serra@3dproducts.com>

Leo:

I see we have received an order on PBMA's Motion for Summary Judgment. Please advise when might we expect responses to our discovery served August 10 and October 2, 2012?

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
United States of America
Telephone: 415-339-8550
tom@thomascooklaw.com

On 1/22/2013 1:26 PM, Thomas Cook wrote:

Leo:

To summarize the email thread appearing below:

On December 17, 2012, I forwarded our latest proposal, and response to PBMA's Motion for Summary Judgment ("Motion"), and requested from you a status regarding outstanding discovery served on PBMA on August 10, 2012 (Set One), and October 3, 2012 (Set Two). I attach a copy of our transmittal and request.

On December 19, 2012, you advised you thought discovery has been suspended in view of the Motion.

On December 19, 2012, I summarized our discovery and Motion activity with the follow five enumerated activities:

1. On August 10, 2012, we served 3D's Discovery, Set One. Responses due: September 14, 2012.
2. On August 27, 2012, we reset the deadline for responses to 3D's Discovery, Set One, by agreement, and consistent with your request, 30 days, to October 14, 2012.
3. On October 3, 2012, we served 3D's Discovery, Set Two. Responses due: November 7, 2012.
4. On October 15, 2012, PBMP served its Motion for Summary Judgement.
5. On December 12, 2012, the Board Suspended these cases.

I also advised on the requirements of TBMP Section 528.03, Suspension Pending Determination of Motion. This section says: "The filing of a summary judgment motion does not, in and of itself,

Subject: 3D International LLC v. Palm Beach Motoring Accessories, Inc. - Outstanding Discovery Responses
From: "Leo Zucker" <lzpatents@gmail.com>
Date: 4/17/2013 5:10 PM
To: <tom@thomascooklaw.com>

Thomas,

We are currently reviewing the decision, and will contact you shortly concerning the outstanding requests.

Best regards,
Leo

Law Office of Leo Zucker
Patent & Trademark Law
PO Box 1177
Yorktown Heights, NY 10598

Tel (914) 302-2460
Fax (914) 302-2459

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-----Original Message-----

From: Thomas Cook [mailto:tclaws@pacbell.net]
Sent: Wednesday, April 17, 2013 7:31 PM
To: Leo Zucker
Subject: Re: Opposition - 91203277 (Parent) - 3D International LLC v. Palm Beach Motoring Accessories, Inc. - 85261047 - Outstanding Discovery Responses Overdue

Leo:

I see we have received an order on PBMA's Motion for Summary Judgment. Please advise when might we expect responses to our discovery served August 10 and October 2, 2012?

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys P.O. Box 1989, 3030 Bridgeway,
Suite 425-430 Sausalito, California 94965-1989 United States of America
Telephone: 415-339-8550
tom@thomascooklaw.com

Subject: Re: Re: 3D International LLC v. Palm Beach Motoring Accessories, Inc. - Outstanding Discovery Responses
From: Thomas Cook <tclaws@pacbell.net>
Date: 4/29/2013 3:41 PM
To: Leo Zucker <lzpatents@gmail.com>
BCC: Serra Goren <serra@3dproducts.com>, Tunch Goren <tg@3dproducts.com>

Leo:

I still have on our calendar PBMA's responses to our discovery served August 10 and October 2, 2012. After the order on PBMA's Motion for Summary Judgment, please advise when we might expect those responses.

We think the Board's order anticipates discovery and responses will have continued to be served while the PBMA's Motion was pending, in the hands of the Board, and we think the Board correspondingly reduced the trial schedule, including the time for discovery. We will therefore request additional time for discovery from the Board, and ask whether PBMA will agree to such additional time (in a reasonable amount).

Regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
United States of America
Telephone: 415-339-8550
tom@thomascooklaw.com

On 4/18/2013 12:20 PM, Thomas Cook wrote:

Received, with thanks,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys
P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

.

On 4/17/2013 5:10 PM, Leo Zucker wrote:

Thomas,

We are currently reviewing the decision, and will contact you shortly concerning the outstanding requests.

Best regards,
Leo